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October 24, 2006

VIA HAND DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Application of Carolina Water Service, Inc. for adjustment of rates and charges for the provision of water and sewer service and modification of rate schedules; Docket No. 2006-92-WS

Dear Mr. Terreni:

Enclosed for filing please find the original and ten (10) copies of Carolina Water Service, Inc.'s Petition for Rehearing or Reconsideration or, Alternatively, Request for Approval of Bond in the above-referenced matter.

I would appreciate your acknowledging receipt of this document by date-stamping the extra copy that is enclosed and returning it to me via our courier delivering same. By copy of this letter, I am serving all parties of record and enclose my certificate of service to that effect. If you have any questions, or need additional information, please do not hesitate to contact us.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

John M.S. Hoefer

JMSH/twb
Enclosures
cc: C. Lessie Hammonds, Esquire
Shannon B. Hudson, Esquire
Nanette S. Edwards, Esquire

RETURN DATE: 10/24/06 ok
SERVICE: ok

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-92-W/S

IN RE:)
)
Application of Carolina Water Service,)
Inc. for adjustment of rates and charges for)
the provision of water and sewer service.)
)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of **Carolina Water Service, Inc.'s Petition for Rehearing or Reconsideration or, Alternatively, Request for Approval of Bond** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

C. Lessie Hammonds, Esquire
Shannon B. Hudson, Esquire
Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

Tracy W. Barnes

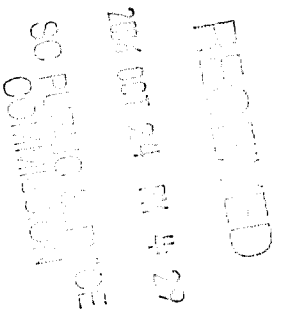
Columbia, South Carolina
This 24th day of October, 2006.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-92-WS



IN RE:	
Application of Carolina Water Service, Inc. for adjustment of rates and charges for the provision of water and sewer service.	**PETITION FOR REHEARING OR RECONSIDERATION AND, ALTERNATIVELY, REQUEST FOR APPROVAL OF BOND**

Carolina Water Service, Inc. ("CWS" or "Company"), pursuant to 2006 S.C. Act No. 387, § 38 (amending S.C. Code Ann. § 58-5-330 (1976)), 26 S.C. Code Ann. Regs. RR. 103-836 (1976) and 103-881 (Supp. 2005), and other applicable law, submits this petition for rehearing or reconsideration of Commission Order No. 2006-543 in the above-captioned matter. Alternatively, pursuant to S.C. Code Ann. § 58-5-240(D) (Supp. 2005), CWS requests approval of a bond to allow it to place rates into effect pending appeal. In support of the foregoing, CWS would respectfully show as follows:

1. CWS's application filed on March 27, 2006, sought approval of a new schedule of rates and charges for water and sewer services provided to its customers in South Carolina which, if approved, would have resulted in an increase in annual service revenues of $957,980. The South Carolina Office of Regulatory Staff ("ORS"), by virtue of S.C. Code Ann. § 58-4-10(B) (Supp. 2005), automatically became a party of record and, pursuant to S.C. Code Ann. § 58-4-50(A)(4) (Supp. 2005), represented the public interest, as defined by S.C. Code Ann.§ 58-4-10(B), in this proceeding. There are no other parties of record in this case. [Order No. 2006-543 at 2.]

2. On August 30, 2006, CWS and ORS submitted to the Commission a Settlement Agreement resolving the issues between them ("Settlement Agreement"). On September 7, 2006, the Commission held a public hearing on the Settlement Agreement at which the parties placed the Settlement Agreement, as supplemented, into the record. Pursuant to same, the Parties stipulated into the record the testimony of four (4) witnesses and offered testimony of two witnesses in support of the Settlement Agreement. Additionally, three (3) persons were permitted to testify subject to prior and contemporaneous objections by CWS.[1] The Commission issued Order No. 2006-543, on October 2, 2006, overruling CWS's objections, rejecting the August 30, 2006, Settlement Agreement, and denying CWS's application for rate relief. Service of Order No. 2006-543 was made upon counsel for CWS by certified mail received on October 4, 2006. CWS submits that Order No. 2006-543 prejudices CWS's substantial rights because certain of the findings, inferences, conclusions, and decisions made therein are erroneous, unsupported by substantial evidence, arbitrary and capricious, characterized by abuse of discretion, in violation of constitutional or statutory provisions, made upon unlawful procedure, or affected by other errors of law or fact, including a failure to separately state findings of fact and conclusions of law as required by S.C. Code Ann. § 1-23-350 (2005), all as set forth herein.

II. PROCEDURAL HISTORY[2]

3. Order No. 2006-543 rejects the parties' Settlement Agreement, stating that "neither the Settlement Agreement nor the hearing provided the Commission with sufficient

[1]The Commission also conducted five "evening public hearings . . . for the express purpose of garnering public opinion regarding the proposed rate increase." [Order No. 2006-543 at 7-8.] The testimony of CWS's customers given in these hearings was subject to objections by the Company.

[2]For purposes of clarity, CWS will state its grounds for rehearing or reconsideration in the same order as, and by reference to, the three separate sections of Order No. 2006-543 following the "Introduction" section.

evidence to determine whether the rates applied for by CWS are just and reasonable." Id. at 1-2. In support of this finding, Order No. 2006-543 states that CWS failed, after being "asked" by the Commission in Order No. 2006-407, "to supplement its application for an increase in rates and charges with accounting information regarding the operations of its individual subsystems" to address "testimony from public witnesses who were concerned that their rates were unfairly subsidizing customers in other subsystems" and that "[t]his information was necessary for the Commission to evaluate the merit of these complaints" for the purpose of "aiding the Commission in determining whether circumstances justify a departure from the Company's proposed uniform rate structure."[3] Id. at 2. For several reasons, the Commission's ruling in this regard is improper.

(a) Order No. 2006-407 states that the Commission's "request" that CWS supplement its application is an "act within the public interest." Id. at 2. CWS submits that the Commission has no authority to act in the public interest in this matter inasmuch as it is a creature of statute and therefore possesses only the authority given it by the legislature. *S.C. Cable Television Ass'n v. The Public Service Commission*, 313 S.C. 48, 437 S.E.2d 38 (1993). There is nothing contained in Chapters 3 or 5 of Title 58 of the Code of Laws of South Carolina which authorizes the Commission to act "in the public interest." To the contrary, the legislature has designated ORS as the sole administrative agency authorized to act in the public interest in

[3]CWS would note that it does not operate "subsystems" and that Commission Order No. 2006-407 does not "request" any information regarding "individual subsystems." *Cf.* also Order No. 2006-458, August 4, 2006, n. 1. To the contrary, Order No. 2006-407 specifies that the information requested be provided by "individual systems" serving CWS customers and "subdivisions" served by CWS. CWS would further note that Order No. 2006-543 states that "the information ultimately sought by the Commission [in Order No. 2006-407] was different from that which concerned the [York County] legislative delegation." CWS respectfully submits that notwithstanding any

matters before the Commission. See S.C. Code Ann. §§ 58-4-10(B) (Supp. 2005) and 58-4-50(4) (Supp. 2005).

(b) The rejection of the Settlement Agreement on the grounds that the Commission's "request" for "accounting information regarding the operations of [CWS's] individual subsystems [sic]" to "supplement its application" was not complied with (i) improperly penalizes CWS for maintaining its accounting records in a manner that is consistent with law, (ii) improperly assigns to CWS a burden of proof and improperly shifts a burden of production onto CWS that is lawfully only properly borne by another party of record, (iii) improperly ignores the Commission's prior precedents, (iv) is unsupported by substantial evidence of record, (v) exceeds the Commission's authority, and (vi) improperly requires CWS to create documentation to respond to the Commission's "request."

As to item (i) hereinabove, CWS submits that the Uniform System of Accounts, which establishes the only applicable accounting standards and requirements in this matter, does not require that CWS compile or maintain information of the type "requested" by the Commission on a system or subdivision basis. See 26 S.C. Code Ann. Regs. RR. 103-517 and 103-719 (Supp. 2005). CWS submits that it cannot be penalized because it complied with the Commission's regulations regarding systems of accounting. Yet, that is what Order No. 2006-543 does.

With respect to items (i) and (ii) hereinabove, CWS properly maintains its accounting records for ratemaking purposes on a statewide, and not subdivision, basis. See *August Kohn & Co. v. Public Service Comm'n and Carolina Water Service, Inc.*, 281 S.C. 428, 313 S.E.2d 630

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differences between the Commission's and legislative delegation's respective requests, the information sought by the Commission quite clearly includes the information sought in the "petition" of the legislative delegation.

(1984). "The burden is upon the **party** challenging uniformity [of rates] and seeking allocation to show that the case so warrants." *Id.*, 281 S.C. at 31, 313 S.E.2d at 632 (emphasis supplied). Thus, the Commission's reliance upon Commission Order No. 2006-458, dated August 4, 2006, to establish the proposition that "CWS bears the burden of proof" in regard to a uniform rate structure is incorrect as a matter of law. Unless a utility seeks a change in a rate, the rate established by the Commission in prior proceedings is **presumed** to be correct. *Hamm v. South Carolina Public Service Comm'n and Carolina Water Service, Inc.*, 315 S.C. 119, 432 S.E.2d 454 (1993). In the instant case, neither CWS nor the only other party of record (ORS) challenged CWS's uniform rate structure and, thus, the Commission improperly rejected the Settlement Agreement on the ground that it lacked information to determine whether "a departure from the Company's proposed uniform rate structure" was appropriate. *August Kohn, Hamm, supra.*

In regard to item (iii) hereinabove, Order No. 2006-543 arbitrarily departs from the Commission's prior precedents established by orders specifically addressing assertions by customers in previous Commission proceedings which concluded not only that a uniform rate structure for CWS was desirable and appropriate, but that the lack of a uniform rate structure resulted in the Company's York County customers being subsidized by CWS's other customers.[4] See *330 Concord Street Neighborhood Ass'n v. Campsen*, 309 S.C. 514, 424 S.E.2d 538 (Ct. App. 1992) (holding that even though administrative agencies are not bound by the principle of *stare decisis*, they may not arbitrarily depart from their prior precedent). No customer – other

[4]At hearing, the Commission took notice of, *inter alia*, Order No. 98-384 in Docket No. 97-464-W/S and Order No. 2001-1009 in Docket No. 2000-207-W/S, which specifically pertain to the assertion by CWS's York County customers that they should be charged a rate lower than that charged other customers of the Company.

than one served by the Company's Riverhills System in York County – requested that the Commission depart from the uniform rate structure previously approved for CWS by the Commission. Yet, this Commission has specifically refused to authorize rates for CWS's York County customers which are lower than those charged to CWS's other similarly situated customers. See Commission Order No. 2001-1009 Docket No. 2000-207-W/S. This rate structure was reaffirmed by the Commission in Order No. 2005-328 in Docket No. 2004-357-W/S. The Settlement Agreement only continues in effect the uniform rate structure that has been expressly determined by the Commission to be appropriate for CWS and which, thus, must be presumed to be correct as a matter of law. *Hamm, supra.* The Commission's rejection of the Settlement Agreement on the ground that CWS failed to provide information which would allow "the Commission to evaluate the merit of these complaints" is clearly an inconsistent application of regulatory authority. *Cf. Mungo v. Smith*, 289 S.C. 560, 571, 347 S.E.2d 514, 521 (Ct. App. 1986). As such, the Commission has arbitrarily departed from its prior precedents in this regard. *330 Concord Street, supra.*

With regard to item (iv) hereinabove, the conclusion that the "fairness of the proposed uniform rate structure" was at issue in this case [Order No. 2006-543 at 4] is unsupported by substantial evidence of record. There is no evidence of record of "special facts and circumstances" which would warrant a departure from the Company's previously authorized uniform rate structure as is required under *August Kohn, supra.* To the contrary, at hearing, the only witness who asserted that a non-uniform rate structure was appropriate acknowledged that there had been no change in the circumstances or conditions of the service provided by CWS in his subdivision since the point in time the Commission established a uniform rate structure for

CWS in 2000. September 7, 2006, Hearing Tr. p.40 ll. 1-23. Nor did this witness describe any "differences in circumstances and conditions between different parts of the territory served [by CWS] as to justify departure from uniform rates" as required by *August Kohn*. To the contrary, this witness acknowledged that "some" subsidization by one service area of another service could be appropriate and admitted that he had no information which would support a conclusion that other systems or subdivisions were not also subsidizing other systems or subdivisions. September 7, 2006, Hearing Tr. p. 44, line 24 - p.45, line 25. And, this witness asserted that a non-uniform rate structure which would result in lower rates for customers in his locale was warranted regardless of the impact such a rate structure would have on other customers of the company – an impact that he admittedly could not quantify. *Id.* Even assuming that this witness had been a party to the case – which he was not – his testimony was insufficient as a matter of law to justify a departure from uniform rates under *August Kohn, supra*[5] and does not support any finding or conclusion based upon the "public interest" as referenced in Order No. 2006-407.

With regard to item (v) hereinabove, the Commission has no authority to "request" information of the type described in Order No. 2006-543 in view of the provisions of 2004 S.C. Act 175, as codified in Chapters 3, 4 and 5 of Title 58 of the Code of Laws of South Carolina. See, e.g., S.C. Code Ann. §§ 58-3-30 (Supp. 2005) (subjecting the Commission to Rule 501 of the South Carolina Appellate Court Rules, including Canon 3 thereof); 58-3-60(D) (Supp. 2005) (precluding the Commission from inspecting, auditing or examining public utilities and delegating the sole responsibility for such activities to ORS); 2004 S.C. Act 175, § 4 (amending

[5]Also see discussion at paragraph 13(d), *infra*. CWS would also note that Order No. 2006-543 fails to recognize that the testimony of this witness is not credible in view of his inability to accurately determine a figure as

S.C. Code Ann. § 58-3-190 to withdraw from the Commission the power to propound questions or interrogatories to public utilities) and Rule 614(b), SCRE.[6] In a similar vein, the Commission's solicitation of further testimony from Don Long to be rendered at the scheduled "merits" hearing was also improper. [Tr. Vol. 2, p. 38, l. 13 – p. 40, l. 19.] The objection of CWS to this was overruled on the ground that "Rule 501, SCACR, Canon 3 was "out of order." [Tr. Vol. 2, p. 40, l. 18; audio tape June 12, 2006.] CWS submits that it was clear error for the Commission to have solicited additional testimony from Mr. Long. "[W]hen judges seek information outside of the record, it constitutes an impermissible independent investigation." *State v. Dorsey*, 701 N.W.2d 238, 251 (Minn. 2005). By independently investigating facts not introduced into evidence, a judge violates his "obligation as the finder of fact to refrain from seeking or obtaining evidence outside that presented by the parties during the trial." *Id.* at 250. These actions are also contrary to the protections afforded persons appearing before administrative bodies under S.C. Const. art. I, §22 which provides that no person shall "be subject to the same person for both prosecution and adjudication" The Supreme Court has observed that "[t]he purpose of article I, § 22 [of the South Carolina Constitution] is to ensure adjudications are conducted by impartial administrative bodies." *Ross v. Medical Univ.*, 328

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basic as an average monthly bill or the Company's revenue properly included for ratemaking purposes. [September 7, 2006, Tr. p. 30, l. 9 – p. 35, l. 9.]

[6]See *Horton v. Ferrell*,335 Ark. 366, 981 S.W.2d 88 (1998) (holding where a special master solicited documents from the parties, submitted a list of questions for the parties to answer, consulted other sources to obtain information used in his findings, the master conducted an independent investigation an in violation of Canon 3(B)(7)); *In re Richardson*, 247 N.Y. 401, 160 N.E. 655 (1928) (holding judges are not investigating instrumentalities of other agencies of government); *State v. Vanmanivong*, 261 Wis. 2d 202, 661 N.W.2d 76 (2003) (holding it is error for a judge to independently gather evidence in a pending case); *Minor v. State*, 2001 Tenn. Crim. App. LEXIS 932 (Tenn. Crim. App. 2001) (holding the law is clear that a court must generally restrain itself to consideration of those facts that are before it an may not conduct an independent investigation).

S.C. 51, 69, 492 S.E.2d 62, 72 (1997). The combination of adjudicatory and investigative functions is clearly improper.

Finally, with respect to item (vi) above, Order No. 2006-543 improperly penalizes CWS for asserting its rights under the South Carolina Rules of Civil Procedure (SCRCP), applicable in the instant matter by virtue of 26 S.C. Code Ann. Regs. R. 103-854 (Supp. 2005), which do not require a party in a case to create documentation in order to respond to discovery requests. See *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 635-36, 500 S.E.2d 145, 155, (Ct. App. 1998).[7] Whether a document would or would not be relevant in a proceeding is itself irrelevant if the document does not exist. *Cf.* Order No. 2006-543. There is no dispute that the documentation sought by Order No. 2006-407 does not exist. Moreover, the rejection of the Settlement Agreement on the ground that the "relevance" of the information "requested" by the Commission was not challenged by CWS and could have been "compiled" simply ignores the fact that no **party** in the case had sought the production of such "compiled" information – much less asserted its relevance.[8] Order No. 2006-543 also overlooks the testimony of Mr. Long that customers in the Riverhills service area knew that they could intervene, but consciously chose not to do so because they understood the limitations on the ability of parties to compel other parties to create documentation. September 7, 2006, Hearing Tr. p. 54, line 18 - p. 55, line 5.

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[7]As is noted in Order No. 2006-543, CWS has previously sought reconsideration of the substance of Order No. 2006-407 by way of its June 30, 2006, letter addressed to the Commission's comprehensive June 27, 2006 directive. However, Order No. 2006-543 states that "CWS made no further arguments regarding the Commission's request." Id. at 4. CWS re-asserts the content of its June 30, 2006, letter in this petition.

[8]CWS submits that this aspect of Order No. 2006-543 clearly demonstrates the untenable position Order No. 2006-407 placed it in: having to argue to the **tribunal** that sought it that a document that does not exist is not relevant in the case.

4. The rejection of the Settlement Agreement on the ground that the parties failed to provide "testimony concerning the unresolved issues of fact previously raised by the Commission" in its September 6, 2006, directive and, thus, resulted in "a lack of evidence" to support the Settlement Agreement, is improper or incorrect for several reasons.

(a) None of the "unresolved issues of fact" referenced in the order were raised by a party. *Cf.* S.C. Code Ann. § 1-23-310(3) and (5) (2005) (defining a "contested case" to include ratemaking proceeding in which the "legal rights, duties or privileges of a **party**" are to be determined by an agency and defining a "party" as a person or agency named, admitted, properly seeking or entitled as of right to be admitted as a party.) Because the Commission is not a party of record in this case, but rather a quasi-judicial tribunal whose powers have been limited by the legislature to that of an adjudicator of disputed matters raised in the context of a contested case, and because no party of record raised these "issues of fact," the Commission's consideration of them in rejecting the Settlement Agreement is contrary to the foregoing provisions of the Administrative Procedures Act.

(b) To the extent that the items numbered 1-5 on page 4 of Order No. 2006-543 were issues proper for the Commission's consideration in this proceeding, which is disputed, they were resolved by the only parties of record by way of their Settlement Agreement, as supplemented.

(c) The Commission's rejection of the Settlement Agreement, as supplemented, denies the parties of record their statutory right to dispose of this case by agreed settlement. See S.C. Code Ann. § 1-23-380(5)(f) (Supp. 2006).

(d) The Commission's rejection of the Settlement Agreement, as supplemented, denies the parties of record their right under Commission regulations to settle disputed matters between them in a formal proceeding and to have that settlement acknowledged by the Commission. See 26 S.C. Code Ann. Regs. R. 103-821.D.(1976).

(e) The Settlement Agreement, as supplemented, was supported by substantial evidence.

III. RULING ON CAROLINA WATER SERVICE'S OBJECTIONS

A. CWS's objection to customer testimony at the "evening public hearings"

5. Order No. 2006-543 erroneously limits the scope of the due process protections to which CWS is entitled by ruling only that CWS "had the opportunity to file responses to its customers' testimony" and "to cross-examine witnesses." While CWS may have been entitled to exercise some of the rights of a party in a contested case, CWS's "complaining" customers were not required to adhere to the obligations of a party in a contested case. For example, no customer was required to provide written information sufficient to satisfy the requirements of a complaint under statute or Commission rules. See, *e.g.* S.C. Code Ann. § 58-5-270 (1976) and 26 S.C. Code Ann. Regs. R. 103-835.A (1976). Nor were any of these customers subject to discovery by CWS with respect to any of the assertions made by customers in any of the public hearings. *Cf.* 26 S.C. Code Ann. Regs. R. 103-851, 854. The disparity in the process afforded CWS is amplified by Order No. 2006-543, which effectively equates customer "complaints" at "evening public hearings" with the written complaints customers are entitled to make under Commission

rules and statute. Id. at 8.[9] Order No. 2006-543 subjects CWS to an extra-statutory complaint process that relieves complaining customers of the obligations arising under, and denies CWS procedural and substantive rights to which it would be entitled within the framework of, the statutory and regulatory complaint process. This is clearly a violation of due process. "The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." *Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision),* 332 S.C. 551, 562 505 S.E.2d 598, 603 (Ct. App. 1998). The Commission failed to put CWS on notice that customers would be allowed to present complaints against CWS and, therefore, denied CWS the opportunity to protect its interests. Even if held otherwise, allowing customers to circumvent the established method of resolving complaints exceeds the powers conferred upon the Commission by the South Carolina General Assembly. "A state administrative agency...can only exercise those powers which have been conferred upon it". *Triska v. Dept. of Health and Env. Control,* 292 S.C. 190, 191 355 S.E.2d 531, 533 (1987). Order No. 2006-543 fails to cite any statutory or regulatory basis which allows customers to raise complaints outside of the procedures delineated in the Commission's regulations; rather, it unilaterally expands the scope of the complaint process in contravention of the legislature's plain and unambiguous intent and the Commission's own rules and procedures. "Any action taken by [a state administrative agency] outside of its statutory and regulatory authority is null and void." *Id.*

6. As described hereinbelow, Order No. 2006-543 misinterprets and misapplies the caselaw and other authority cited by CWS in support of its objection to the Commission's receipt

[9]"Furthermore, nothing in the Commission's statutory authority or the regulations governing the Commission that allow for customer complaints indicates that the customer complaint-filing process is the exclusive vehicle for raising issues regarding a company's quality of service."

and reliance upon unsubstantiated customer complaint testimony, departs from prior Commission interpretations of pertinent caselaw, ignores other relevant decisions of the Supreme Court (including one previously recognized by the Commission to be binding upon it), misstates the nature of CWS's objection, improperly relies upon the appellate standard of review of Commission determinations in treating the substantive law applicable to CWS's objections, improperly concludes that "public testimony" may be used to ferret out potential quality of service issues for inquiry by the Commission, and improperly holds that determinations regarding customer testimony pertaining to rate design and uniform rates do not have to be supported by substantial evidence of record. As a result, the Commission's overruling of CWS's objection is improper.

(a) Contrary to Order No. 2006-543, *Patton v. S.C. Public Serv. Comm'n*, 280 S.C. 288, 312 S.E.2d 257 (1984) does not speak to whether "quality of service" is a proper consideration "in determining a reasonable rate of return" or a "just and reasonable operating margin." Id. at 9. Rather, *Patton* holds only that, in supervising and regulating the **service** of a public utility under S.C. Code Ann. § 58-5-210, the Commission may impose "reasonable requirements on its jurisdictional utilities to insure that adequate and proper **service** will be rendered to customers" and that the withholding of an otherwise allowable increase in rates until a utility makes upgrades to facilities to meet DHEC standards is a proper means by which the Commission may discharge its authority to regulate and supervise the service provided. Moreover, *Patton* sanctioned the Commission's action – which, again, was simply to withhold rate relief in one of eight subdivisions served by the utility until upgrades to the plant serving that subdivision were made – in view of not simply testimony by customers of the utility in that

subdivision, but also the separate testimony by DHEC personnel that the utility's plant serving that subdivision did not meet DHEC standards. 312 S.E. 2d at 260. Thus, in *Patton* (1) customer complaints alone were not held to be sufficient to support the denial of rate relief, (2) objective testimony from a DHEC witness that the utility's facility in that subdivision failed to meet DHEC standards was provided, and (3) only a delay in the availability of otherwise allowable rate relief for service to customers in one subdivision resulted. By contrast, Order No. 2006-543 does not cite to any DHEC standard which the Company's facilities do not meet, does not identify any subdivision or customer whose service was affected by substandard facilities, and does not limit the nature of Commission action to addressing the shortfalls of the Company's service and facilities with respect to such standards. Rather, Order No. 2006-543 denies CWS rate relief in all of CWS's 96 subdivisions based simply on the unsubstantiated testimony of customers in 7 subdivisions. Thus, in addition to misinterpreting and misapplying *Patton,* Order No. 2006-543 is not supported by substantial evidence of record in this regard and also fails to comport with S.C. Code Ann. § 1-23-350 (2005).

(b) Moreover, the analysis of *Patton* in Order No. 2006-543 fails to adhere to the Commission's own prior interpretation of that case and fails to recognize a subsequent decision of the Supreme Court which the Commission recognized as being binding upon it in the Company's last rate case. In Order No. 2005-328, Docket No. 2004-357-W/S, June 22, 2005, the Commission cited *Patton* for the proposition that the quality of service rendered by CWS is, for purposes of determining just and reasonable rates, determined by reference to its **adequacy**. Id. at 3. Order No. 2006-543 makes no finding that the Company's service was not adequate. *Cf., Able Communications, Inc. v. S.C. Public Service Comm'n.*, 290 S.C. 409, 351 S.E.2d 151

(1986) (precluding the Commission from making implicit findings of fact.) Furthermore, in the same order the Commission also recognized that *Heater Utilities, Inc. v. Public Service Commission of South Carolina*, Op. No. 95-MO-365 (S.C.S.Ct. Filed December 8, 1995) precluded it from denying rate relief based upon customer testimony complaining of the quality of service in the absence of scientific criteria and objective, quantifiable data regarding quality of service. Order No. 2005-328 at 57. In the instant case, there is no quantifiable, objective data or scientific criteria in the record which supports a finding that CWS's service is not adequate. To the contrary, the only quantifiable, objective or scientific evidence of record is that provided by ORS's testimony, which was that the Company provides adequate service. The Commission's departure from its prior precedent in this regard is arbitrary and, thus, improper. *330 Concord Neighborhood Ass'n, supra.*

(c) Order No. 2006-543 improperly dismisses the circuit court's order in *Tega Cay Water Service, Inc. v. South Carolina Public Service Commission*, C/A No. 97-CP-40-0923, September 25, 1998 ("Circuit Court Order"), as simply "expanding the holding in *Patton* by maintaining that customer testimony related to poor quality of service, if not corroborated by other substantial evidence in record, fails to support a Commission order giving an insufficient return." Id. at 10. Order No. 2006-543 fails to recognize that the Circuit Court Order specifically cites the Supreme Court's decision in *Heater, supra*, as its primary basis for rejecting the Commission's reliance upon "unsubstantiated customer complaints in the face of the Commission staff's own study showing that the quality of water service was acceptable." [Circuit Court Order at 7-8.] *Patton* was cited in the Circuit Court Order as only supporting authority for the conclusion reached by the circuit court based upon *Heater*. [Circuit Court

Order at 9.] Order No. 2006-543 therefore fails to address the substance of CWS's objection regarding reliance upon unsubstantiated "customer complaints."

(d) Order No. 2006-543 misinterprets CWS's objection[10], which has two components. First, CWS objected to customer testimony which raises complaint issues outside the statutory and regulatory process on the due process and statutory grounds described in paragraph 5 hereinabove. Second, CWS objected to the Commission's receipt **and reliance** upon customer complaint testimony regarding "quality of service" which is not supported by non-testimonial, scientific criteria and objective, quantifiable data that would demonstrate that CWS's service is not adequate. CWS's objection in this regard is not based on an assertion that customer testimony is always unsubstantiated. However, CWS does assert that customer testimony is objectionable when it is not substantiated in the manner required under *Heater* and the Circuit Court Order and consistent with *Patton*. Clearly, these cases stand for the proposition or support the conclusion that customer complaints regarding quality of service, without more, are not substantiated to the point that they may constitute substantial evidence of inadequate service that justifies complete denial of rate relief – particularly when viewed in the light of the ORS conclusion that CWS does provide adequate service.

(e) Order No. 2006-543 improperly concludes that the merit of CWS's objection should be determined by reference to the standard of review binding upon a court which reviews Commission orders. [Order No. 2006-543 at 11-12.] In addition to being irrelevant to the substantive legal requirements for determining the adequacy of a utility's service

[10]"[T]he Commission does not agree with CWS's apparent argument that these cases stand for the proposition that the Commission is not entitled to consider the testimony and evaluate the credibility of public

in reliance upon customer testimony set out in *Heater* and the Circuit Court Order and given effect in *Patton*, the standard of review on appeal is immaterial in the context of a settlement agreement involving all parties of record as there would be no appeal. See Rule 201(b), SCACR, ("Only a party . . . may appeal). Accord, *Condon v. State*, 354 S.C. 634, 583 S.E.2d 430 (2003).

(f) Order No. 2006-543 improperly concludes that public testimony which alerts the Commission to "potential quality of service issues" permissibly "prompt[s] it to engage in further inquiry." For the reasons stated in paragraph 3 above, CWS submits that the Commission has no authority to engage in any such inquiry, same being beyond the Commission's authority and within the exclusive authority of ORS. See, also, 2006 S.C. Act 318, § 233 (conforming amendment to 2004 Act 175 repealing S.C. Code § 58-5-280 (1976)).

(g) Order No. 2006-543 concludes that customer "concerns" regarding rate design and uniformity of rates "do not depend on [the] evidentiary foundation" required by *Heater*, the Circuit Court Order and *Patton* because "[t]hese concerns are conceptual in nature and based upon [CWS's] proposed rates." Id. at 13. This conclusion is incorrect inasmuch as all three of these cases require substantial evidence of record to support a Commission determination and none sanction Commission action in response to customer testimony which is not substantiated by competent, sufficient evidence. Moreover, even though the Company's application reflects a rate design which is uniform in nature and features flat rates for sewer service, this portion of Order No. 2006-543 overlooks the fact that CWS sought no change in its rate design, that its rate design was previously approved by the Commission, and therefore

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witnesses in the ratemaking process. CWS essentially argues that the testimony of public witnesses is "unsubstantiated" and therefore may not be considered." Order No. 2006-543 at 12.

constituted a just and reasonable rate design as a matter of law. *Hamm, supra.* As such, it is incumbent upon a party who seeks to alter that rate design to provide substantial evidence of record which overcomes that presumption and demonstrates that some aspect of the rate design was not just and reasonable. *August Kohn, Hamm, supra.* In addition to there being no such evidence presented by a party in this case, there was no customer who asserted any non-testimonial, scientific criteria or objective, quantifiable data that would demonstrate that CWS's previously approved rate design was unreasonable. Accordingly, the evidentiary foundation required by *Heater*, the Circuit Court Order and *Patton* is applicable – particularly in view of ORS's report in this case endorsing the continued application of CWS's previously approved rate design. *Cf., Heater, supra.* Because it is unclear to CWS whether or not Order No. 2006-543 withholds a ruling on CWS's objection in this regard, CWS respectfully requests that the Commission issue a ruling.

B. CWS's objection to the testimony of Mr. Hershey, Mr. Long and Mrs. Bryant at the September 7, 2006, Hearing

8. Commission Order No. 2006-543 overrules CWS's objection to the testimonies of Paul Hershey, Don Long and Brenda Bryant on a variety of grounds. For the reasons discussed hereinbelow, these testimonies should not have been permitted.

(a) With respect to the testimony of Mr. Hershey, CWS did not object on the ground that he was not an intervenor. To the contrary, CWS objected on the ground that Mr. Hershey had ceded the time reserved for his testimony to Mr. Long. Moreover, Order No. 2006-543 fails to set forth the facts supporting its conclusion that "Mr. Hershey did not cede his time to [Mr.] Long" as required by S.C. Code Ann. § 1-23-350.

(b) With respect to the testimony of Mr. Long, Order No. 2006-543 fails to address the substance of the objection made at the June 12, 2006 "evening public hearing" with respect to the propriety of the Commission soliciting further testimony from Mr. Long at the "merits" hearing in this docket. See Tr. Vol. 2, p. 39, line 19 - p. 40, line 18; see also September 7, 2006, Hearing Tr. Vol. 1, p. 7, line 20 - p. 8, line 11. CWS respectfully requests that the Commission rule on that objection.

(c) With respect to the testimony of both Mr. Long and Mrs. Bryant, Order No. 2006-543 holds that "it is within the Commission's discretion to allow any lawful evidence it deems **necessary** into the record" and that "[w]hen the Commission **believes** that a public witness has additional information to contribute, the Commission is within the bounds of its discretion to allow such a witness to testify more than once." Id. at 14 (emphasis supplied). Initially, CWS notes that Order No. 2006-543 cites no authority for the proposition that the Commission has the right to act upon its belief or desire with respect to evidence which it deems "necessary" to be introduced into the record of a proceeding. Furthermore, this portion of Order No. 2006-543 begs the question of why the Commission believed that "additional information" from these witnesses was necessary and what basis the Commission had to act upon its belief. The Commission's staff is precluded by law from participating as a party or offering testimony on issues before the Commission. See S.C. Code Ann. § 58-3-60(A) (Supp.2005). CWS submits that if the Commission may not cause evidence to be introduced in a case through its own staff, it certainly cannot solicit evidence from non-parties. Moreover, the Commission itself may not properly engage in independent investigation of facts or question witnesses for the purpose of developing a record in a case. See S.C. Code Ann. § 58-3-30(B), Rule 501 SCACR,

Canon 3.B(7), Commentary, and Rule 614(b), SCRE. Furthermore, permitting these witnesses to render additional testimony after the parties of record had prefiled their testimony improperly accorded these witnesses the right of providing surrebuttal testimony – a right that was specifically reserved to ORS and any intervenors by the Commission – in this case. For each of these reasons, permitting Mr. Long and Mrs. Bryant to testify twice in this matter was improper.

(d) CWS objected to the testimony of Mr. Long, Mr. Hershey and Mrs. Bryant at the September 7, 2006, hearing based on the fact that the matter had already been settled by the parties of record. Order No. 2006-543 overrules CWS's objection[11] on the ground that sustaining the objection would have deprived Mr. Long of "a meaningful opportunity to testify regarding any Settlement Agreement." Id. at 14-15. This ruling is incorrect for several reasons. First, only parties in a case are entitled to object to a settlement agreement. See S.C. Code Ann. § 1-23-320(a) (Supp. 2005) ("In a contested case, all *parties* must be afforded an opportunity for hearing.") Moreover, by according these three persons the rights of a party without requiring them to adhere to the Commission's procedures regarding intervention, CWS was denied due process. See S.C. Const. art. I, § 22. Additionally, the fact that the Settlement Agreement "left [the Commission] without a contested case to review" is not a basis for overruling this objection given that both statute and Commission regulation contemplated this. See § 1-23-320(b) and R. 103-822.D. If any of these three persons had wished to contest the case, they could have intervened and become a party entitled to contest the matter before the Commission. The fact that they did not intervene precluded them from contesting the case. See S.C. Code Ann. § 1-23-

[11]Although the objection to Mrs. Bryant's and Mr. Hershey's testimony on this ground is not addressed, CWS assumes that the Commission's ruling regarding Mr. Long's testimony would apply. If not, CWS requests that the Commission rule on CWS's objection to Mrs. Bryant's and Mr. Hershey's testimony on this ground.

310(3) and (5) (Supp. 2005). Overruling the objection of CWS on this basis effectively elevates these three persons to the status of a party in contravention of the Commission's regulations and the APA. CWS submits that this, too, violates due process under S.C. Const. art. I, § 22. Finally, the fact that the parties of record resolve the disputed issues between them by way of a settlement agreement which does not take into account the positions of non-parties does not require a "rubber stamp" by the Commission and is not "patently inconsistent with the Commission's statutory obligation to review and approve proposed rates and charges." Order No. 2006-543 at 15. To the contrary, submission of a settlement agreement by the parties for formal acknowledgment by the Commission is consistent with both statute and Commission regulation. See S.C. Code Ann. § 1-23-320(f) (Supp. 2005) and 26 S.C. Code Ann. Regs. R. 103-821.D (1976). For each of these reasons, CWS's objection to the testimonies of Mr. Long, Mrs. Bryant and Mr. Hershey should have been sustained.

IV. DISCUSSION

9. Order No. 2006-543 states that the Commission held "concerns about the rates proposed in the Company's application and quality of service," that "these issues had to be resolved in the course of its consideration of the case," and that, because "[t]he Parties were either unable or unwilling to address these issues to the Commission's satisfaction...the Commission is left with no choice but to reject CWS's application." Id. at 15. CWS submits that whatever concerns the Commission may have harbored, no substantial evidence of record exists to support a conclusion that CWS's service was not adequate. *Cf. Patton, Heater* and the Circuit Court Order, *supra.* Nor is there any finding in Order No. 2006-543 that CWS's service was not adequate. *Cf., Able, supra.* To the contrary, the only substantial evidence of record was

set forth in ORS's report, which found that CWS's service was adequate. See Settlement Agreement Ex. B, Ex. DMH-3, p. 1. CWS submits that this portion of Order No. 2006-543 is therefore erroneously based upon the apparent conclusion that the Commission may ignore substantial evidence of record on the issue of quality of service in favor of unsubstantiated customer testimony for the purpose of rejecting the Settlement Agreement, as supplemented.

10. Order No. 2006-543 states that § 58-5-210 gives rise to a mandate to the Commission "to fix just and reasonable standards, and therefore just and reasonable rates." Id. at 15. This is incorrect as the statute does not correlate the fixing of just and reasonable standards of service with the fixing of rates for service.[12] Similarly, the finding that S.C. Code Ann. § 58-5-240(H) (Supp. 2005) "requires the Commission to approve 'fair' *rates* that are documented fully in its finding of fact . . . based exclusively on reliable, probative, and substantial evidence on the whole record" is incorrect as the statute addresses a Commission **determination** of a fair **rate of return**. A "[u]tility rate and utility rate of return are not the same." *Parker v. S.C. Public Serv. Comm'n.*, 285 S.C. 231, 328 S.E.2d 909 (1985). Moreover, the Commission was not asked to determine a fair rate of return, but to formally acknowledge the agreement of the parties as to a fair rate of return. *Cf.* § 1-23-320(f) and R. 103-821.D.

11. Order No. 2006-543 cites to *Hilton Head Plantation Utilities, Inc. v. Public Serv. Comm'n*, 312 S.C. 448, 441 S.E.2d 321 (1994) for several propositions in support of its conclusion that the Supreme Court has recognized "[t]he Commission's duty to independently review an application" and an "independent right of inquiry" available to the Commission. CWS

[12]The referenced statute provides in pertinent that the Commission is "to the extent granted, vested with the power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together

submits that the cited case does not support these propositions or this conclusion for several reasons.

(a) First, *Hilton Head* does not even discuss – much less affirm – an "independent duty" on the part of the Commission to review rate applications or an "independent right of inquiry." Nor would it have since, unlike today, the Commission's own staff was capable of being a party in that case.[13]

(b) Second, the issue of the Commission's reliance upon testimony of a "public witness"[14] to support its denial of rate relief in *Hilton Head* was never discussed, much less treated, in the Supreme Court's decision. Rather, and as the Supreme Court's opinion clearly reflects, the Commission's determination to deny rate relief was affirmed on the ground that the utility had failed to make a *prima facie* showing that its affiliate expenses were reasonable. *Hilton Head*, 312 S.C. at 451, 441 S.E.2d at 323. This holding was based on foreign authority and made new law in South Carolina since, prior to the decision in *Hilton Head*,

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with the power, after hearing, to ascertain and fix such just and reasonable standards . . . of service to be furnished, imposed, observed and followed by every public utility in this State."

[13]Order No. 2006-543 states that the "Commission staff and the Consumer Advocate (whose advocacy roles have since been assumed by the ORS) did not challenge the payments at issue." Id. at 16. While it is correct that the Commission staff did not challenge the payments in *Hilton Head*, that is hardly surprising since, prior to the holding in that case, all incurred utility expenses were presumed reasonable in the absence of evidence to the contrary. See paragraph 11(b), *infra*. Furthermore, contrary to this statement, the Consumer Advocate was not a party in the case. See Order No. 92-115, Docket No. 91-164-W/S, February 20, 1992, at 2 ("[n]o Petitions to Intervene were filed"). Finally, ORS has not assumed any advocacy roles from the Commission staff or the Consumer Advocate under 2004 Act 175. Rather, ORS has assumed all of the Commission's investigating, auditing, and examining authority, the Commission staff has been precluded from participating as a party in cases before the Commission, and the Consumer Advocate's role of representing the consumer interest in cases before the Commission has simply been eliminated. With regard to the latter, the interest of the using and consuming public is one of but three interests that the ORS is charged with the exclusive duty of balancing and representing as part of its obligation to represent the "public interest." See § 58-4-10.

[14]Contrary to Order No. 2006-543, this person was actually a witness on behalf of a "protestant representing many consumer rate payers." *Hilton Head*, 312 S.C. at 449, 441 S.E.2d at 322.

expenses incurred by a utility were entitled to a presumption of reasonableness under *Hamm, supra*. *Id.*

(c) Third, nowhere in *Hilton Head* does there appear the holding "[t]he PSC must review and analyze intercompany dealings and determine if they are reasonable." *Cf.* Order No. 2006-543 at 17 and 422 S.E.2d at 322-3.[15] And the gravamen of the holding apparently being cited in this portion of Order No. 2006-543 is not that the Commission has any specific power or authority to investigate affiliate expenses, but that it is incumbent upon a utility to demonstrate that affiliate expenses are reasonable by producing data and information to support that assertion – the absence of which permits the Commission to disallow the expense without more.

(d) Fourth, there was no independent inquiry by the Commission of the affiliate expenses at issue in *Hilton Head*. *Cf.* Order No. 2006-543 at 17. In fact, the testimony of the witness on behalf of the protestant was not the subject of any questions from the Commission staff or the Commission panel hearing that case. See Docket No. 91-164-W/S, Hearing # 9013, January 16, 1992, Transcript of Testimony and Proceedings, Volume 1 of 1, p. 75, l.23 - p. 75, l.5.[16] Moreover, the Commission's orders in that case made clear that it was relying solely upon the utility's application, the Staff audit report verifying the claimed affiliate transaction expenses asserted therein, and the unsolicited testimony of the protestant witness for

[15]Moreover, even if such a holding did appear in this case, its continued efficacy would be in question given that the functions of reviewing and analyzing CWS's affiliate transactions have devolved upon ORS under the statutory provisions resulting from 2004 Act 175 and are beyond the Commission's authority.

[16]And, unlike the instant case, the testimony of the protestant's witness was not the subject of an objection by the utility.

the purpose of concluding that the expenses should not be allowed. See Order No. 92-115, February 20, 1992, and Order No. 92-232, April 1, 1992, Docket No. 91-164-W/S.

A. The Commission's inquiries

12. Order No. 2006-543 states that, because the parties failed to respond to the Commission's inquiries, the Commission was left "with no choice but to reject the settlement and the Company's application based on the lack of evidence presented." Id. at 18. CWS submits that this conclusion is incorrect since the record is replete with evidence which would support the findings the Commission would have been required to make if the case had been presented as a contested case seeking approval of rates contained in the Settlement Agreement. In other words, the parties presented the Commission with more than sufficient evidence with respect to the Company's expenses, revenues, rate base, return on equity, and adequacy of service to justify a contested case determination that the settlement rates were just and reasonable. Moreover, the Commission's Settlement Policies and Procedures do not have the force and effect of law inasmuch as they were not promulgated in accordance with the rulemaking provisions of the APA and are therefore not binding upon CWS. See S.C. Code Ann. § 58-3-140(D) (Supp. 2005); *Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 413 S.E.2d 13 (1991); *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 2006 S.C. LEXIS 302, 32-33 (S.C. 2006) ("When the action or statement 'so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion,' then it is a binding norm which should be enacted as a regulation." (*quoting Ryder Truck Lines, Inc. v. U.S.*, 716 F.2d 1369, 1377-78 (11th Cir. 1983). Furthermore, the application of these policies is inconsistent with the right of parties to settle their contested case disputes without

proceeding with a merits hearing. See § 1-23-320(f) and R.103-822.D.[17] These policies, to the extent that they purport to supplant the authority of ORS to ascertain and represent the public interest and act directly to resolve disputes and issues within the Commission's jurisdiction, are also inconsistent with § 58-4-10 and S.C. Code Ann. § 58-4-50(9) (Supp. 2005). And even assuming that application of these policies was appropriate, there is no basis in the instant matter for a determination under same that the Settlement Agreement was not "reasonable, in the public interest, or otherwise in accordance with law or regulatory policy."[18] Furthermore, and as noted above, the Commission's obligation "to make specific and detailed findings of fact to support its conclusions" (Order No. 2006-543 at 19) is inapplicable where all of the parties of record have agreed to settle a disputed matter and no appellate review will result.

1. Request for financial data concerning CWS's subsystems

13. In rejecting the Settlement Agreement on the ground that the Parties failed to provide the Commission with "financial data regarding the individual subsystems operated by CWS", Order No. 2006-543 states that *August Kohn, supra*, "is inapposite for several reasons." Order No. 2006-543 at 20-21. For the following reasons, CWS submits that Order No. 2006-543

[17]Demonstrative of the inherent conflict between the application of the Commission's Settlement Policies and Procedures and due process of law is the observation in footnote 12 of Order No. 2006-543 that "[t]he Parties had the opportunity to more fully present their case at a merits hearing." Id. at 18. This "opportunity" is illusory since it places CWS in the position of litigating issues before the fact finder after having already exposed to the fact finder the terms and conditions upon which CWS is willing to settle. This can hardly accord with due process. Application of the policy in this respect is also inconsistent with the preference for settlement agreements which finally resolve disputes between a private party and the State. *See, e.g., Condon v. State of South Carolina*, 354 S.C. 634, 583 S.E.2d 430 (2003).

[18]In its footnote 12, Order No. 2006-543 states that the parties failed to provide "evidence of any facts stipulated, notwithstanding the stipulation of the Parties" and that "the Parties chose to ignore the directives of the Commission." Id. CWS would respectfully note that the Commission's "request" for "accounting information regarding its individual subsystems [sic]" predates the Commission's September 6, 2006 directive addressed to the Settlement Agreement by more than two months. Accordingly, it was not the Settlement Agreement that caused the Commission "concern" with respect to this "issue" and the parties' comportment with the settlement policies of the Commission was immaterial in this regard.

misinterprets CWS's argument based upon that case and incorrectly interprets and misapplies the Supreme Court's decision therein and in other cases.

(a) CWS does not assert that *August Kohn* "stand[s] for the proposition that a uniform rate structure is the only appropriate rate structure for the company." However, the case clearly does stand for the proposition that, absent special facts and circumstances, a uniform rate structure is the norm and that the **party** challenging uniformity and seeking an allocation of rates to a specific subdivision bears the burden of proof that non-uniform rates should apply.

(b) Order No. 2006-543 states that the Commission has a "right to inquire about the appropriateness of a uniform rate structure." As a result of S.C. Code Ann. §§ 58-3-30, 58-3-60(D), and 58-3-190, as well as the repeal of § 58-5-280, the Commission no longer possesses the power to conduct any inquiry and the Commission's inability to conduct this inquiry cannot lawfully form a basis for rejecting the Settlement Agreement. See *S.C. Cable Television Ass'n, supra.*

(c) Order No. 2006-543 states that the Commission "has not received enough information to meaningfully evaluate the uniform rate structure proposed by the Parties." CWS submits that – even if this were correct – no such information was required to be produced by the parties since (i) CWS's uniform rate existing uniform rate structure is deemed just and reasonable as a matter of law (*Hamm, supra)*, (ii) no party has challenged the continuation of CWS's existing uniform rate structure (*August Kohn, supra*), (iii) the Commission has twice previously determined that a non-uniform rate structure for CWS customers in York County is appropriate and there is no substantial evidence of record to support a departure from a uniform rate structure as is required to justify a departure from non-uniform rates (*August Kohn, supra*).

(d) Order No. 2006-543 questions "*August Kohn's* continued applicability to the present operations" of CWS on the ground that "CWS's properties are far flung across the state, and for the most part are not interconnected." Initially, CWS submits that this portion of Order No. 2006-543 is unsupported by any evidence of record in this regard. Furthermore, this portion of Order No. 2006-543 recites language from a Connecticut case which is not mentioned, much less adopted, in *August Kohn*. Finally, this portion of the Commission's order is patently inconsistent with the Supreme Court's recognition in *August Kohn* that the funds derived from the rate sought to be charged to the appellant in that case were to be applied "generally by Carolina Water Services [sic] **to its statewide facilities** as conditions require." *Id.*, 313 S.E.2d at 631. CWS requests that the Commission take notice of its own orders establishing the fact that CWS was operating systems in differing counties in South Carolina which were not interconnected at the time of the decision in *August Kohn*. See, e.g., Order No. 77-124, February 28, 1977, Docket No. 76-646-W/S, Order No. 78-109, March 1, 1978, Docket No. 77-667-W/S, Order No. 78-342, June 5, 1978, Docket No. 78-148-S, Order No. 79-96, February 27, 1979, Docket No. 78-506-S, Order No. 79-450, August 29, 1979, Docket No. 79-181-W/S, Order No. 80-480, August 28, 1980, Docket No. 80-162-W/S, Order No. 81-385, May 29, 1981, Docket No. 81-73-W/S, Order No. 83-257, April 22, 1983, Docket No. 83-34-W/S.

14. In addressing the testimony of CWS witness Steven M. Lubertozzi offered in support of the Settlement Agreement (describing the manner in which the Company's accounts for its Riverhills system, refuting the assertion that customers served by that system subsidize other CWS customers, and stating that a reduction in rates for customers in Riverhills will result in higher rates for other customers), Order No. 2006-543 states that "no evidentiary basis in the

record for these assertions, and no evidence, other than Lubertozzi's conclusory testimony, was offered by the Parties to address this issue." Id. at 22. This statement is incorrect inasmuch as the Commission has taken notice of its prior orders in the proceedings in which Riverhills customers sought a reduction in rates and in which the Commission approved an increase in rates in Riverhills which created the Company's current, approved uniform rate schedule. [September 7, 2006, Hearing Tr. p. 27, l. 7 - p. 28, l. 5.] See n. 5, *supra.* These orders recognized that a reduced rate for customers in Riverhills resulted in other CWS customers subsidizing Riverhills customers and that no special circumstances or conditions exist which would justify non-uniform rates. Moreover, this portion of Order No. 2006-543 fails to recognize that no evidence of record exists that refutes Mr. Lubertozzi's testimony in this regard. In fact, Mr. Long acknowledged that the elimination of uniform rates would result in rate increases for some customers. [Tr. p. 44, l. 24 - p. 45, l. 7.] But see, September 7, 2006, Hearing Tr. p. 73, ll. 7-17.

15. Order No. 2006-543 states that, because "the Company was able to break down its records so as to provide information on the systems in [the Kings Grant, Plantation Ridge and Teal on the Ashley subdivisions]" and provide that information to ORS for purposes of determining the effect of the sale of CWS assets to Dorchester County, "it is clear that financial data on individual CWS subdivisions can be calculated." Id. at 23-24. Based upon that, Order No. 2006-543 concludes that the "Company's failure to provide such information to the Commission regarding the River Hills subsystem interfered with the Commission's ability to successfully determine whether or not any cross-subsidization might be occurring with that subdivision's system" and, as a result, "the Commission was prevented from determining just

and reasonable rates because of a lack of evidence/information furnished by the parties." Id. at 24. These conclusions are erroneous for several reasons.

(a) The fact that CWS is able to create documentation is not a legal basis upon which the Commission may "request" that it do so or penalize it if it fails to adhere to such a request. As already noted above, the Commission no longer holds any investigative, auditing or examining authority with respect to CWS as a result of 2004 Act 175 – a fact observed by the Commission in one of the "evening public hearings" conducted in this matter. [Tr. Vol. 2 p. 63, ll. 9-20.]

(b) The conclusion that CWS is capable of creating and producing the documentation "requested" by the Commission – which would include development of data and records for dozens of systems and subdivisions – within the period of time "requested" is speculative and unsupported by any evidence of record. CWS would note that discussions regarding Dorchester County's proposed acquisition of CWS's Kings Grant system have been going on for more than a year. [See, e.g., Transcript of Hearing # 10687, April 18, 2005, p. 20, ll. 14-23.] Moreover, the only evidence of record in this regard is that the process of complying with the Commission's request would likely be both extensive and expensive. [September 7, 2006, Hearing Tr. P. 90, l. 7 – p. 91, l. 10.]

(c) The conclusion that the Commission's ability to determine the existence of cross-subsidization was interfered with fails to recognize that (i) no issue of cross-subsidization was raised by a party, (ii) the Commission lacks authority to engage in inquiries to determine the existence of cross-subsidization, (iii) ignores the stipulated testimony offered in support of the

Settlement Agreement, and (iv) encroaches upon the exclusive authority of ORS to investigate, audit and examine public utilities.

2. Request for information on sewer backups.

16. Order No. 2006-543 concludes that the failure of CWS to provide information regarding the recording of sewer backups, the number occurring during the test year, the resolution of same, efforts for preventing same, and comparisons to industry standards, prevents the Commission from ascertaining the quality of CWS's service as a factor in just and reasonable rates. This conclusion is erroneous for a number of reasons:

(a) Order No. 2006-543 does not cite any customer testimony regarding the number, location or cause of sewer backups – much less testimony that demonstrated that a backup occurred during the test year, that it resulted from an act or failure to act on the part of CWS (see 26 S.C. Code Ann. § 58-5-270 (1976) and 26 S.C. Code Ann. Regs. R 103-835 (1976)), or that CWS failed to properly repair or remediate a backup which resulted from an act or failure to act on the part of CWS. By contrast, the evidence of record demonstrates that sewer backups can occur through no fault of CWS. [Settlement Agreement Ex. B, p.7, ll. 11-21.]

(b) Order No. 2006-543 ignores the stipulated testimony offered in support of the Settlement Agreement with respect to the adequacy of CWS's service, including the report of ORS with respect to customer complaints.

(c) Order No. 2006-543 exceeds the authority of the Commission to investigate, audit and examine public utilities and encroaches upon the exclusive authority of ORS to do so.

3. Request for information regarding the proposed flat rate fee structure for sewerage services.

17. Order No. 2006-543 concludes that the parties' failure "to explain why the Commission should find that the flat-rate sewerage billing is just and reasonable and why the Parties believe that a flat-rate billing scheme is superior to one based upon individual usage" in view of the testimony of three customers precluded the Commission from making a "proper determination" in this regard. This portion of Order No. 2006-543 is erroneous for several reasons:

(a) This portion of Order No. 2006-543 fails to recognize-the presumption that CWS's currently authorized rate structure is just and reasonable under *Hamm* and that no party of record raised this as an issue in the case.

(b) Order No. 2006-543 states that "South Carolina determines whether a flat rate billing structure is just and reasonable on a case by case basis." Id. at 25. This is incorrect. As the Supreme Court held in *Hamm, supra*, previously established rates are presumed to be just and reasonable unless a utility seeks a change in them. In the instant proceeding, CWS sought no change in its sewer rate design. Thus, the issue of sewer rate design is not a matter to be determined "on a case by case basis." Moreover, CWS has had a flat sewer rate in effect since at least 1975. CWS requests that the Commission take notice of its last 29 orders approving rates for CWS, all of which reflect a flat sewer rate and none of which reflect any discussion with respect to same.[19] Finally, although it may be the practice of Florida to convert a basic facility

[19]See Order No. 18,244, dated March 26, 1975, Docket No. 17,666; Order No. No. 18,471, dated July 9, 1975, Docket No. 17,605; Order No. 18,281, dated April 14, 1975, Docket No. 17,967; Order No. 19,078, dated March 18, 1976, Docket No. 18,521; Order No. 77-125, dated April 13, 1977, Docket No. 76-298-WS; Order No. 77-124, dated February 28, 1977, Docket No. 76-646-WS; Order No. 77-629, dated September 21, 1977, Docket

and gallonage charge rate structure, CWS notes that neither of the cited cases from foreign jurisdictions resulted in the elimination of flat rates.[20]

(c) CWS has nearly 12,000 sewer customers. Settlement Agreement Ex. B, p. 3, l. 21. Only three (3) of them have expressed a concern in the instant proceeding with respect to the Company's flat rate sewer billing structure and none of them have substantiated their complaint with objective, quantifiable data or non-testimonial, scientific criteria which would demonstrate that their sewer rate would be lower under an alternative structure. Order No. 2006-543 is therefore inconsistent with *Heater, supra*, particularly in light of ORS's recommendation that a flat rate sewer structure be maintained.

4. Request for information regarding the rate case expenses claimed in the Settlement Agreement

18. Order No. 2006-543 concludes that there was a "complete lack of evidence on rate case expenses, other than the provision of the numbers themselves" and that this "severely limited the Commission's ability to make its independent determination" regarding the expenses claimed. For the reasons discussed below, this conclusion is erroneous.

No. 76-646-WS;Order No. 77-764, dated November 3, 1977, Docket No. 77-470-WS; Order No. 78-109, dated March 1, 1978, Docket No. 77-667-WS; Order No. 78-516, dated September 12, 1978, Docket No. 78-386-WS; Order No. 79-96, dated February 27, 1979, Docket No. 78-506-S; Order No. 79-450, dated August 29, 1979, Docket No. 79-181-WS; Order No. 80-380, dated June 30, 1980, Docket No. 79-469-WS; Order No. 80-256, dated April 28, 1980, Docket No. 80-24-S; Order No. 81-385, dated May 29, 1981, Docket No. 81-73-WS; Order No. 81-659, dated October 6, 1981, Docket No. 81-250-WS; Order No. 82-580, dated August 27, 1982, Docket No. 82-202-WS; Order No. 83-257, dated April 22, 1983, Docket No. 83-34-WS; Order No. 83-820, dated December 2, 1983, Docket No. 83-238-WS; Order No. 83-822, dated December 6, 1983, Docket No. 83-239-WS; Order No. 85-969, dated November 1, 1985, Docket No. 85-169-WS; Order No. 86-1200, dated December 1, 1986, Docket No. 86-220-WS; Order No. 87-258, dated March 13, 1987, Docket No. 86-284-WS; Order No. 89-573, dated June 5, 1989, Docket No. 88-241-WS; Order No. 94-484 issued May 31, 1994, Docket No. 93-738-W/S; Order No. 93-402, dated May 11, 1993, Docket No. 91-641-W/S; Order No. 98-163, dated March 2, 1998, Docket No. 93-738-W/S; Order No. 2001-887, dated August 27, 2001, Docket No. 2000-207-W/S; Order No. 95-1762, dated December 28, 1995, Docket No. 95-794-W/S.

[20]Order No. 2006-543 at n. 15.

(a) This portion of Order No. 2006-543 fails to acknowledge that non-affiliate expenses of a utility are presumed to be reasonable and incurred in good faith and impermissibly shifts to CWS the burden of producing information to the Commission demonstrating that no tenable basis for raising the specter of imprudence exists. *Hamm, supra.*

(b) This portion of Order No. 2006-543 incorrectly cites *Porter v. S.C. Public Serv. Comm'n*, 328 S.C. 222, 231, 493 S.E.2d 92, 97 (1997) for the proposition that "[t]he reasonableness of rate case expenses has long been debated before this Commission and before the Courts." Id. at 26. *Porter* does not address the reasonableness of rate case expenses but, rather, the Consumer Advocate's challenge (on the grounds of retroactive ratemaking) to the inclusion in current rate case expense of unrecovered, allowable rate case expense incurred in two prior rate cases. In *Porter*, the unamortized rate case expense allowed had previously been approved by the Commission and there was simply no issue of the reasonableness of the rate case expenses in the current year. Nor does *Porter* in any way suggest, much less hold, that the reasonableness of rate case expenses "has long been debated" – before the Court or the Commission.

(c) This portion of Order No. 2006-543 fails to acknowledge that the $100,277 in unamortized rate case expense has already been determined by the Commission to be reasonable.

(d) This portion of Order No. 2006-543 fails to acknowledge that ORS has conducted an audit of the Company's current rate case expenses and has found them to be reasonable and that no issue regarding their reasonableness has been raised by a party.

(e) Although Order No. 2006-543 does not conclude that the determination of the reasonableness of an attorneys fee under Rule 407, SCACR, 1.5, Rules of Professional Conduct addressed in *Condon v. State of South Carolina*, 354 S.C. 634, 583 S.E.2d 430 (2003) is applicable in a utility rate case, CWS is compelled to respond to this portion of the Commission's order in view of the later conclusion that the Commission "did not have enough evidence to be able to evaluate the reasonableness of attorney's fees, specifically." *Condon* involved a settlement agreement in which the parties had agreed that an *award* of attorneys fees to be paid by the State would be determined by the trial court. *Id.*, 354 S.C. at 637, 583 S.E.2d at 431. In the instant case, the Settlement Agreement provides for attorneys fees as a component of agreed rate case expense and does not require any determination or award by the Commission. This portion of the Settlement Agreement simply recognizes that utilities are entitled, as a matter of law, to recover their expenses. See *Hamm v. Public Serv. Comm'n*, 310 S.C. 13, 425 S.E.2d 28 (1992). Even though these expenses are presumed to be reasonable under *Hamm, supra*, the record clearly demonstrates that same were audited by ORS and found to be reasonable. [Settlement Agreement Ex. A, Audit Ex. SGS-4 at 12.] Order No. 2006-543 fails to recognize this and the fact that, as part of the Settlement Agreement, ORS negotiated a rate case expense that did not include any expense incurred by the Company after the completion of the ORS audit. Id. Moreover, even if the Commission had held that the factors under Rule 1.5, RPC applied in a utility rate case, *Condon* would not support such a holding since the Supreme Court therein rejected the attempt of the Attorney General to challenge the reasonableness of the attorneys fee award on the basis that "his duty to protect the public interest enables him to appeal, even as a nonparty." *Id.*, 354 S.C. at 640, 583 S.E.2d at 433. In addressing this aspect of the Attorney

General's argument, the Supreme Court noted that its holding in this regard "serves the public interest in the finality of settlement agreements, **particularly in settlements with the State.**" *Condon,* 354 S.C. at 642, 583 S.E.2d at 434 (emphasis supplied.) In the instant proceeding, the state agency charged with auditing, examining and investigating a public utility and representing the public interest in connection therewith, has determined that the rate case expenses provided for in the Settlement Agreement – which compromise the amount which CWS could have requested – are reasonable and prudently incurred. Clearly, that serves the public interest. *Condon, supra.*

5. Request for information regarding DHEC violations

19. Order No. 2006-543 concludes that because of "the Commission's unanswered questions concerning the Company's compliance with PSC reporting requirements as to DHEC violations" and the parties' failure "to call any witness at the settlement hearing to address the Commission's concerns about compliance with its standards", there were "unresolved questions of fact in the record directly relevant to whether CWS's proposed rates are just and reasonable." For the following reasons, CWS submits that this portion of Order No. 2006-543 is erroneous.

(a) Initially, CWS would note that 26 S.C. Code Ann. Regs. RR. 103-514.C and 103-714.C do not require CWS to report DHEC violations to the Commission. *Cf.* Order No. 2006-543 at 29. Rather, these regulations address interruptions of service to customers and by their plain terms only require CWS to report to the Commission DHEC **notices** of violation which **affect service to customers**. There is no evidence of record that CWS has failed to file with the Commission a DHEC notice of violation affecting service to customers.

(b) Furthermore, the existence of a DHEC violation is only properly a concern of the Commission where that violation results in inadequate service to customers. *See Patton, supra.* Here, there is no evidence of record that CWS's service is inadequate and the only evidence is that it is adequate.

(c) The fact that three wastewater systems received an unsatisfactory rating in their most recent DHEC compliance audits (Order No. 2006-543 at 29) is not a relevant consideration regarding the Company's quality of service for several reasons. First, the testimony of ORS witness Hipp reflects that all CWS wastewater systems were currently "operating adequately and in accordance with DHEC rules and regulations." [Settlement Agreement Ex. B, p.6.] *Cf. Patton, supra.* Second, no customer at any of these three CWS wastewater systems complained of inadequate sewer facilities.

(d) There is no requirement of law or regulation which requires that the Commission be provided notice of an exceedence of a maximum contaminant level for radium in water (Order No. 2006-543 at 29), with DHEC regulations specifying only that customers be notified. See 24A S.C. Code Ann. Regs. RR. 61-58.6.B and 61-58.6.E (Supp. 2005).

(e) Order No. 2006-543 states that the parties failed "to address the Commission's concerns about compliance with its standards." Id. at 29. No reference is provided, however, to any statute or Commission regulation articulating such standards.

CONCLUSION

20. Order No. 2006-543 concludes that "it is statutorily incumbent upon this Commission to independently determine whether the proposed rates in a settlement are just and reasonable" under § 58-5-210. CWS submits that the plain meaning of § 58-5-210 does not

support this conclusion and that same is therefore erroneous. *Converse Power Dev. Corp. v. DHEC*, 350 S.C. 39, 564 S.E. 2d 341 (Ct. App. 2002). (holding that administrative agencies may not interpret statutes which they are charged with administering in a manner that expands upon the plain meaning of the statutory language).

21. Order No. 2006-543 states that the Settlement Agreement was "insufficient to allow [the Commission] to make findings that are sufficiently detailed to allow the [Supreme] Court to make the requisite determination" citing *Porter v. S.C. Public Service Comm'n*, 333 S.C. 12, 507 S.E.2d 328 (1998). Again, CWS submits that the rule requiring sufficiently detailed findings of fact in Commission orders to enable meaningful appellate review is irrelevant when the order is one acknowledging a settlement among all parties that will not be the subject of judicial review. See Rule 201(b), SCACR ("Only a **party** aggrieved by an order, judgment or sentence may appeal), as applied in *Condon, supra.* The holding in *Porter* is therefore inapplicable.

22. Order No. 2006-543 cites *Kiawah Island Property Owners Group v. Public Service Comm'n*, 359 S.C. 105, 597 S.E.2d 145 (2004) to support the conclusion that "the Commission may exercise its independent judgment in setting rates and is not limited to adopting or rejecting the testimony of witnesses, as long as the Commission's Order is based on the evidence of record." CWS submits that the cited case does not support this conclusion inasmuch as the Supreme Court's opinion makes clear that (a) the Commission's determination of allowable rates generating the resulting operating margin was supported in the record by the testimony given by the PSC staff witness and (b) the rejection of the utility accountant's expert testimony as to an appropriate operating margin did not preclude the Commission from relying

upon "its own staff's research" to determine rates which yielded a resulting operating margin.[21] The Supreme Court's affirmance of the Commission's reliance upon the accounting testimony of its own Staff witness to determine rates which gave rise to a resulting operating margin in *Kiawah* in no way authorizes the Commission to "exercise independent judgment in setting rates." Moreover, the holding in *Kiawah* is inapposite in the instant case since it involved neither a determination of operating margin nor a settlement between the parties of record. Similarly, *Kiawah* was determined prior to the enactment of 2004 Act 175, which precludes the Commission staff from participating in cases as a party of record and which devolves upon ORS not only the auditing and accounting functions formerly supplied by Commission staff, but creates a new duty and responsibility to act directly to settle disputed matters before the Commission. Any recognition of a right of "independent judgment" on the Commission's part in *Kiawah* – which is disputed – is of questionable status in view of the restructuring resulting from 2004 Act 175.

23. Order No. 2006-543 adopts language from *Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401 (Ind. Ct. App. 2d Dist., 1996) in support of its conclusion that the Commission is entitled to exercise "independent judgment" in setting rates.

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[21]As the Commission is aware, its determination in *Kiawah* was that it could properly rely upon the Commission Staff's proposed accounting adjustments to arrive at a **resulting** operating margin. See Order No. 1999-349, Docket No. 98-328-W/S, May 17, 1999 ("The operating margin number simply falls out, when one takes the ratio of income to revenue, after removal of interest." Id. at 5.) Therein, the Commission also concluded that in an operating margin case, unlike a rate of return on rate base case such as the instant case, "that it is very difficult, if not impossible to have a witness testify as to an appropriate operating margin, since this is merely a ratio of income to revenue." It is little wonder that the Supreme Court rejected the appellant's argument in *Kiawah* that the Commission was bound to accept "expert testimony" with respect to an appropriate operating margin given that the Commission did not use an operating margin to arrive at the approved rates. ("We therefore hold that our determination of the appropriateness of a 6.5% operating margin was supported by the substantial evidence of record, since it was derived from a calculation after the proper determination of the proper accounting and pro forma adjustments." Order No.1999-349 at 5-6.)

CWS submits that this decision is inapposite for a variety of reasons. Initially, CWS notes that the Commission is not one of the "regulatory agencies" described in *Citizens*. This is so given that the Commission has no statutory "duty to move on [its] own initiative where and when [it] deem[s] appropriate. *Id.*, 644 N.E.2d at 406. To the contrary, the commission's prior authority to act on its own motion has been withdrawn by the legislature. See 2006 Act 318, § 233 (repealing S.C. Code Ann. § 58-5-280 (1976)). Nor is the Commission an agency with which settlement agreements "must be filed and approved." See § 1-23-320(f) and R. 103-822.D. And the Commission has no authority to determine whether "the public interest will be served" in a water or sewer rate case. To the contrary, whether the public interest is served is a determination exclusively within the statutory authority of another agency – ORS. See § 58-4-10. The distinction between courts and regulatory agencies underlying the cited language in *Citizens* is clearly the key to its holding. And as one United States Court of Appeals observed in a case cited by the Indiana court in *Citizens*, "[t]his difference in procedure between the courts and regulatory agencies stems form the different roles each is empowered to play." *Penn. Gas & Water Co. v. Federal Power Comm'n*, 463 F.2d 1242, 1246 (D.C. Cir. 1972). CWS respectfully submits that as a result of 2004 Act 175, the Commission is subject to the Canons of Judicial Conduct binding upon a court and the ORS is empowered to act as a regulator and, as a result, the logic of *Citizens*, as well as the logic applied in the other authorities cited in footnote 18 of Order No. 2006-543, is inapplicable in the instant case.[22]

[22]Also inapposite is *Scenic Hudson Perservation Conference v. Federal Power Commission*, 354 F.2d 608, 620 (2d Cir., 1965), the other case cited in this part of Order No. 2006-543. This is so because the quoted portion of this case is prefaced by the Second Circuit's observation that "[i]n this case, as in many others, the Commission has claimed to be the representative of the public interest." *Scenic, supra.* By contrast, it is clearly beyond this Commission's authority to represent the public interest. See § 58-4-10. Moreover, *Scenic* is distinguishable from

24. Neither of the South Carolina cases cited in this portion of Order No. 2006-543 support the conclusion that "the Commission has a separate and independent obligation to review a settlement agreement and its ancillary issues." Id. at 31. In *Duncan v. Alewine*, 273 S.C. 275, 255 S.E.2d 841 (1979), the Supreme Court reversed a circuit court order approving a settlement agreement in a will construction case on the grounds that non-answering defendants had, by their default, only consented to a judicial interpretation of the will and not to the awarding of relief to the other parties of record by way of a settlement which was detrimental to the non-answering defendants. *Id.*, 273 S.C. at 283, 255 S.E.2d at 845-846. However, the Supreme Court amplified its holding to make clear that non-answering defendants could be subjected to relief detrimental to them if they were "put on notice by the complaint and the relief granted was within the contemplation of the prayer for relief." *Id.* In the instant case, there are no "non-answering defendants" inasmuch as the only parties in the case (see § 1-23-310(5)) are signatories to the Settlement Agreement. Even assuming that there were in this case other "defaulting defendants" as discussed in *Duncan*, they were clearly put on notice by CWS's application that the relief provided for in the Settlement Agreement might be granted and knew that the case could be settled by the parties. See § 1-23-310(f), R. 103-822.D, and § 58-4-50(A)(9). See *LaBruce v. City N. Chas.*, 268 S.C. 465, 234 S.E. 2d 866 (1977) and *Smothers v. USFG*, 322 S.C. 207, 470 S.E. 2d 858, (Ct. App. 1996). Finally, *Duncan* does not hold that the circuit court had a "duty to determine the *rights* of the non-answering defendants." Order No. 2006-543 at 31. Rather, it holds only that the circuit court should have determined the "*identity* and the *interests*" of the

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the instant case since it does not involve a settlement agreement proposed by a state agency specifically charged by the legislature with the duty and responsibility to act directly to resolve disputes and issues within the Commission's jurisdiction. See § 58-4-50(9).

non-answering defendants. *Duncan, supra.* Here, the identity and interests of persons who might be affected by the relief arising out of the Settlement Agreement require no determination by the Commission. Similarly inapposite is *Blejski v. Blejski*, 325 S.C. 491, 480 S.E.2d 466 (Ct. App. 1997). Although this case does hold that a family court judge must determine if a divorce settlement is "within the bounds of reasonableness from both a procedural and substantive perspective," this holding must be considered in light of the fact that a divorce action is equitable in nature. *Mitchell v. Mitchell*, 283 S.C. 87, 89, 320 S.E.2d 706, 707 (1984). See, also, *Ebert v. Ebert*, 320 S.C. 331, 340, 465 S.E.2d 121, 126 (Ct. App. 1995) ("[a] court approved divorce settlement must be viewed in accordance with principles of equity and there is implied in every such agreement a requirement of reasonableness.) Thus, a family court is empowered to deny agreed upon relief if it concludes that the relief is inequitable to a party. Administrative proceedings, on the other hand, are purely statutory and the Commission possesses no equitable powers under the law. Moreover, unlike a divorce action, the instant case involves the participation of a party charged with the statutory duty and responsibility of acting directly to resolve cases before the Commission in a manner which that party determines to be in the "public interest." See §§ 58-4-10 and 58-4-50(A)(9). CWS submits that equitable considerations of the sort prevalent in a divorce proceeding are simply inapplicable in the instant case and *Blejski* does not apply.[23]

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[23] CWS submits that the comparison of the instant proceeding to a class action under the South Carolina and Federal Rules of Civil Procedure is inapt. [Order No. 2006-543 at 31, n. 19.] Unlike the instant case, a member of a class of plaintiffs or defendants is a party to the case unless that person or entity opts out of the Class. *In re: Brand Name Prescription Drugs Anti-Trust Litigation,* 115 F. 3d 456 (7th Cir. 1997, as amended, (July 17, 1997)). ("We begin with the opt-outs. Having opted-out of the class action, they were no longer members of the class and so in no sense were parties.") In the instant case, no customer is a party unless and until he/she/it intervenes. See §1-23-310(5). Moreover, unlike non-representative class members, customers are aware of rate relief proceedings

25. Order No. 2006-543 cites *Bryant v. Arkansas Public Service Commission*, 877 S.W.2d 594 (1994) for the proposition that "ORS's statutory mandate to represent the public interest" does not preclude the Commission from making "an *independent finding,* supported by substantial evidence in the record, that the settlement resolves the matters in dispute in a way that is fair, just and reasonable, and in the public interest." Id. at 32. *Bryant* does not support this conclusion for a variety of reasons. First, unlike the Arkansas PSC, the Commission is not authorized "to do all things, whether specifically designated in [its enabling statute], that may be necessary or expedient in the exercise of its power or jurisdiction, or in the discharge of its duty." *Bryant*, 877 S.W.2d at 598. Rather, the Commission is limited to the powers specifically granted it by the General Assembly. *S.C. Cable Television, supra.* Further, the Arkansas Attorney General was not "in fact, charged by statute with protecting the interests of all parties in the case." Order No. 2006-543 at 32. To the contrary, the Arkansas Attorney General was empowered only "to represent all classes of utility ratepayers." *Bryant*, 877 S.W.2d at 598. Quite clearly, there were parties of record other than utility ratepayers in that case. *Id.* 877 S.W. 2d at 596-597. Moreover, unlike South Carolina, Arkansas does not appear to have any agency charged by the legislature with the duty of representing the "public interest." See § 58-4-10.

26. Even assuming that the Commission is authorized to "make a separate and independent finding as to whether or not the settlement results in just and reasonable rates," the

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ab initio because of the notification requirements imposed by the Commission which, in this case, included individual notification to each customer which apprised them of their right to intervene and participate as a party. See §58-5-240(A) and (B). By contrast, in class action proceedings, most class members have no knowledge of the proceeding unless and until a settlement is reached or a judgment entered. *See,* Newberg on Class Actions, Conte and Newberg (4th Ed. 2002) West Group §8.1, at 162-163. ("[A]bsent class members are typically the least knowledgeable of the aspects of the litigation, such as the nature of the claims, the type of relief sought and relief offered by the culpable parties. Notice of the proceeding in appropriate circumstances will bolster satisfaction of

evidence presented was more than sufficient to support the Settlement Agreement. In essence, Order No. 2006-543 fails to consider the evidence presented on the grounds that it did not include evidence the Commission wanted to be included. As a result, the Commission has exceeded its statutory authority by improperly injecting itself as a party in the case and ignoring the statutory charge of the ORS. CWS has therefore been denied a fair and impartial hearing on the Settlement Agreement, as supplemented, in violation of S.C. Const. art. I, § 22 and Rule 501 SCACR, Canon 3.

27. The Commission's dismissal of the Settlement Agreement in Order No. 2006-543 is further arbitrary and capricious in light of the Commission's findings and adoption of the Settlement Agreement in its Order No. 2006-582 issued on October 9, 2006, in Docket No. 2006-97-W/S (copy attached hereto and incorporated herein by reference as Exhibit "A"). There a water and wastewater utility applied for an increase in its rates and charges and the parties to that matter proposed a settlement agreement almost identical to that provided in this matter. The Commission raised similar concerns regarding customer complaints and service quality issues. However, the Commission held that it was "satisfied that the various matters of service quality may be addressed administratively through action outside of this Docket" though "the evidence provided is so deficient that it is within the Commission's discretion to deny the requested rate increases." CWS asserts that, given the similarity of issues raised and of the evidence presented by the parties in furtherance of the settlement agreements in each action, such divergent findings demonstrate that Order No. 2006-543 was the result of arbitrariness and capriciousness.

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constitutional requirements of due process and assist in the preservation of final judgments.") Thus, it is hardly surprising that courts must protect the interest of absent class members when a settlement is reached.

28. CWS asserts that the rejection of the Settlement Agreement constitutes arbitrary and capricious action in that it denies CWS rate relief completely when it could have conditioned it upon CWS's compliance with Commission directives to address specific problems. As previously stated, *Patton* recognizes the authority of the Commission to withhold an otherwise allowable increase in rates pending the utility's provision of adequate and proper service pursuant to DHEC standards. Here, there is no finding that CWS did not provide adequate and proper service assuming, *arguuendo*, that the unsubstantiated customer complaints did demonstrate that CWS's service was substandard in some respects, that does not mean that the expenses, rate base, and return on equity set forth in the Settlement Agreement were not appropriate and that some level of rate relief was not warranted. See *Hamm v. Public Serv. Comm'n*, 310 S.C. 13, 17, 425 S.E.2d 28, 30-31 (1992). ("The Commission must authorize sufficient revenue to afford utilities the opportunity to recover and the capital cost of doing business.") Order No. 2006-543 did not find that CWS was not in need of rate relief and, therefore, impermissibly denies CWS the rate relief to which it is legally entitled.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. CWS incorporates by this reference and reasserts the contents of the preceding paragraphs of the within petition with respect to the findings of fact and conclusions of law set out in paragraphs 1-15 of Section IV of Order No. 2006-543.

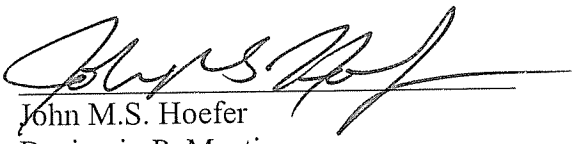
30. In the event that this petition for rehearing or reconsideration is denied, CWS requests that the Commission approve a bond pursuant to S.C. Code Ann. § 58-5-240(D) (Supp. 2005) in the amount of $474,117. This figure represents the additional annual revenue which CWS would be entitled to earn if the Commission had not rejected the Settlement Agreement.

Attached hereto as Petition Exhibit "B" is a proposed bond form to be executed by a surety company authorized to do business in this state. CWS submits that, based upon the additional amount of revenues which would be generated over and above those authorized in Order No. 2006-543 over a period of one year,[24] a surety bond in the amount proposed is sufficient. CWS therefore requests that the Commission approve the attached bond form to be posted during any appeal by CWS in the event that the rates provided for under the Settlement Agreement are not accepted upon this petition for rehearing or reconsideration. CWS further requests that the Commission allow CWS to make any refunds required (if the rates put into effect are finally determined to be excessive) by crediting existing customers' bills.

WHEREFORE, having set forth the proper grounds, CWS requests that the Commission issue an order: (a) granting this petition for rehearing or reconsideration; (b) modifying the findings, conclusions, and decisions in Order No. 2006-543 in accordance herewith; (c) in the event that rehearing or reconsideration are not granted, approving the attached bond form to be conditioned upon the refund, by way of credits on existing customers' bills, if the rates put into effect are finally determined to be excessive; and (d) granting CWS such other and further relief as is just and proper.

[24]CWS assumes that any further proceedings regarding this matter would take approximately one year to complete in view of the fact that appeals from orders of the Commission now proceed directly to the Supreme Court. See 2006 S.C. Act No. 387, § 39, amending S.C. Code Ann. § 58-5-340 (1976).

Respectfully submitted,



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Columbia, South Carolina
This 24th day of October, 2006

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-97-WS - ORDER NO. 2006-582

OCTOBER 9, 2006

IN RE:	Application of Tega Cay Water Service, Inc. for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service.	)))))	ORDER APPROVING RATES AND CHARGES

I. INTRODUCTION AND PROCEDURAL HISTORY

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the application for an increase in rates and charges filed by Tega Cay Water Service, Inc. ("TCWS" or "the Company"). A Joint Motion for Settlement Hearing and Adoption of Settlement Agreement ("the Joint Motion") was subsequently filed by the South Carolina Office of Regulatory Staff ("ORS") and TCWS (together referred to as the "Parties" or sometimes individually as a "Party").

This original application for approval of rates and charges was noticed in compliance with the instructions of the Commission's Docketing Department. No Petitions to Intervene were filed; however, several protests were received by this Commission. The Commission held a public hearing in the service area on July 11, 2006. Subsequently, the Parties represented to the Commission that they had engaged in discussions on the issues of this case and determined that their interests and the public interest would best be served by settling all issues pending in the above-captioned case

under the terms and conditions set forth in a Settlement Agreement (the "Settlement Agreement," also referred to as the "Stipulation" herein) executed by the Parties. The Joint Motion for a Settlement Hearing was granted.[1]

On August 22, 2006, the Commission held a hearing for the parties to describe the Settlement and to provide opportunity for public comment on the Settlement Agreement.[2] An evidentiary hearing was also held on the Settlement Agreement on August 29, 2006 ("the Settlement hearing"). At the Settlement hearing, TCWS was represented by John M.S. Hoefer, Esquire, and ORS was represented by Wendy B. Cartledge, Esquire, and Jeffrey M. Nelson, Esquire. The testimony of various witnesses was filed with the Settlement Agreement, and the parties requested that that testimony and any exhibits attached to the testimony be stipulated into the record of the case, along with the prefiled testimony of certain other witnesses. The only "live" testimony presented by the parties occurred at the August 29, 2006, hearing with the presentation of Converse Chellis, CPA, and B.R. Skelton, Ph.D.

In addition to presenting the testimonies of witnesses Chellis and Skelton, the Parties agreed to stipulate and to include in the hearing record of this case the prefiled direct testimonies of Willie J. Morgan, Lena Sunardio, and Bruce T. Haas, including all attached exhibits, as well as portions of the prefiled rebuttal of Haas, and the testimony of Daniel Sullivan with revised Audit Exhibits. The testimonies of ORS witness Sullivan (and his exhibits) and Company witness Skelton provide sufficient support to allow the

[1] The Settlement Agreement and Exhibits are attached to this Order as Order Exhibit 1.

[2] No members of the public appeared in opposition to the Settlement Agreement.

Commission the discretion to adopt the Settlement Agreement. Sullivan's testimony provides grounds for adoption of the agreed upon accounting adjustments proposed by the parties in settlement. The testimony of Company witness Skelton supports the agreed upon rate of return.[3]

Based on the reasoning stated below, we approve the Settlement Agreement proposed by the parties, albeit with reservations about the manner in which it was presented.

II. RULING ON TEGA CAY WATER SERVICE'S OBJECTIONS

The objections lodged by the Company with regard to this Commission's receipt of testimony from the public on the issues of customer service, quality of service, and customer relations are overruled. See Transcript of Testimony and Proceedings, July 11, 2006 at 6-7; see also Letter of TCWS (dated August 21, 2006). The Company had objected to public testimony on the grounds of possible due process violations, circumvention of Commission complaint procedures, and improper use of the public testimony to determine just and reasonable rates.

First, there are no due process violations. The Company has had the opportunity to file, and has filed, responses to the customers' testimony. It chose not to call witnesses to address customers' testimony. Second, there is no circumvention of complaint procedures. Clearly, the evening public hearing held in this case was for the express

[3] While Skelton did not give any specific explanation to support his conclusion that the agreed upon rates were just and reasonable and adequate for the Company, we assume, based on his testimony and responses to questions, that he had read and was familiar with the earlier prefiled testimonies of Company witness Ahern and ORS witness Wooldridge in formulating his opinion. Upon entering into the Settlement Agreement, the parties withdrew Wooldridge's and Ahern's prefiled testimonies. See also Transcript of August 29, 2006 Hearing at 8-9.

purpose of receiving public opinion regarding the proposed rate increase and hearing any public comments, including complaints about the Company's service. "Quality of service" is a component that this Commission is required to consider in arriving at just and reasonable rates for the Company. Third, the Parties' objection that the Commission improperly used public testimony to determine just and reasonable rates in the present case is moot since the Commission is adopting the parties' own proposed rates as contained in the Settlement Agreement.

The objections are overruled, including the Company's objection to the Hearing Exhibits filed by the members of the public. The Company objected to all public hearing exhibits as being related to unsubstantiated complaints. However, these exhibits did not affect the Commission's ruling on the stipulations of the parties and are immaterial to this Order.

III. SUMMARY OF SETTLEMENT AGREEMENT

In its Application, TCWS requested an increase in annual revenues of $196,542. For the Settlement, the parties agree to an increase in net annual revenues of $59,619.[4] As approved, TCWS receives approximately thirty percent (30%) of the proposed annual revenue set forth in its Application. The Company's last rate increase was in 1999.

As part of the settlement, the Company agreed to accept ORS's adjustments, as reflected in the Settlement Audit Exhibits, including the removal of the plant acquisition adjustment (PAA) from TCWS rate base (Adjustment #6) and from the calculation of net

[4] The Company requested an increase in gross revenue of $197,199 and an increase in uncollectible accounts of $(657) which result in a net annual revenue increase of $196,542. The Settlement Agreement included an increase in gross revenue of $59,816 and an increase in uncollectible revenue of $(197) which result in a net annual revenue increase of $59,619.

income for return through amortization of the PAA (Adjustment #21). Additionally, as part of the settlement, the Company agreed to the exclusion of the 4% salary increase requested by TCWS. Under the proposed settlement rates, a residential water customer would experience a six cent per month increase in the basic facilities charge for water and no increase in the water commodity charge. With regard to sewer rates, a customer would receive a $2.93 increase per Single Family Equivalent (SFE) in the monthly sewer charge.

The approved Settlement Agreement gives TCWS a net annual revenue increase of $59,619. This net revenue increase is based on a stipulated return on equity of 9.40% and a return on rate base of 7.64%, with a resultant operating margin of 6.95%. As a part of the Settlement, TCWS agrees to file a performance bond for water service in the amount of $300,000 and a performance bond for sewer service in the amount of $350,000 by December 31, 2006. TCWS also agrees to deposit unclaimed refund monies with the State in the amount of $10,822.92 which is the balance of refund monies posted to inactive accounts per Commission Order Nos. 1999-191, 1999-457, and 1999-733 resulting from TCWS' last rate case.

IV. DISCUSSION

A. The Commission has the Power and Jurisdiction to Independently Review Settlement Agreements in Utility Rate Cases.

By statute, the Commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the duty, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed

and followed by every public utility in this State. S.C. Code Ann. Section 58-5-210 (1976). Further, it is incumbent upon the Commission to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also distribute fairly the revenue requirements, considering the price at which the company's service is rendered and the quality of that service. Seabrook Island Property Owners Association v. South Carolina Public Service Commission, 303 S.C. 493, 401 S.E. 2d 672 (1991).

At the August 29 hearing, counsel for TCWS candidly stated the position taken by the Company and the ORS regarding the Commission's power to independently review settlement agreements in utility rate cases:

> It would be almost like....the parties come to you in the settlement of a wreck case, and one of the litigants has said, 'well, you know what, I've got a soft tissue injury and the chiropractor has told me I need, you know, this amount of therapy, and I want this amount of money.' But, they settled and that party comes to you and says, 'my concerns are resolved in that regard. I no longer need that therapy,' 'then the question is not whether you should order that therapy. The question is whether or not the parties' interest are reasonably resolved by the Settlement Agreement, and I think as you heard from both of the witnesses that I offered in support of the Settlement Agreement, the parties are always much better off devising their own resolution than having one imposed.
>
> And so, the difference, the distinction, I would make for you, ...is, you don't have a party in this case telling you that this Settlement is not reasonable; you don't have a party in this case telling you that the Settlement is not in the parties' interest; and you don't have a party in this case telling you the public interest has not been served.

Transcript of Settlement Hearing, pp. 25, l. 24 – 26, l. 21.

We categorically reject this argument. The difference between the settlement of a public utility rate case and the settlement of a private dispute involving a "soft tissue"

automobile accident claim is obvious to this Commission. The former implicates this Commission's granting the authority to impose rates and charges on the customers of a state chartered monopoly, while the latter involves the settlement of a purely private controversy. TCWS and the ORS are essentially arguing that the Commission has no choice but to approve a settlement on the basis of their bald representations that it is just and reasonable and serves the public interest. This interpretation of the law is incorrect; it is not in the best interest of the customers of this state's regulated utilities. The Commission will not abdicate its duty to independently review a settlement agreement. An agency may not accept a settlement merely because the parties before it are satisfied; rather, an agency must consider whether the public interest will be served by accepting the settlement. See Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc., 664 N.E. 2d 401, 406 (1993).

Further, the Settlement Policies and Procedures of the Commission (Revised 6/13/2006) address this issue. Section II of that document ("Consideration of Settlements") states:

> When a settlement is presented to the Commission, the Commission will prescribe procedures appropriate to the nature of the settlement for the Commission's consideration of the settlement. For example, the Commission may summarily accept settlement of an essentially private dispute that has no significant implications for regulatory law or policy or for other utilities or customers upon the written request of the affected parties. On the other hand, when the settlement presents issues of significant implication for other utilities, customers, or the public interest, the Commission will convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is just, fair, and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. Approval of

> such settlements shall be based upon substantial evidence in the record.

Clearly, these Settlement Policies and Procedures differentiate between settlements in the type of private case ("soft tissue injury") referred to by counsel for TCWS, and the case before us, where the settlement presents issues of significant implication for customers and/or the public interest.

As recognized by the Settlement Policies and Procedures, this Commission was clearly correct in convening "an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is just, fair, and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy." The counsel for the Company is wrong in his attempt to characterize this case as a private matter between the Company and ORS. There is no question that this matter concerns the interests of the Company's customers, and the public interest in general.

Act No. 175 of 2004, which established the Office of Regulatory Staff, did not change the duties of the Commission in this regard.[5] The parties, through their attorneys, expressed the opinion that, because ORS is the representative of the public interest, the Commission need not concern itself with an independent consideration and/or

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[5] Act 175 clearly did not include any explicit repeal of Section 58-5-210, and the South Carolina Supreme Court very recently reiterated the longstanding rule that implied repeal is extraordinary and disfavored under South Carolina law:

> Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconcilement. Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994). Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them.

Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 141-42, 628 S.E.2d 38, 41 (2006) (citing City of Rock Hill v. South Carolina DHEC, 302 S.C. 161, 167, 394 S.E.2d 327, 331 (1990)).

determination of the issues, including whether or not the rates resulting from the Stipulation were just and reasonable and/or whether the public interest was served by the Stipulation. Tr. at 20; 24-25. This position is not in accord with existing law. The ORS is charged with representing the public interest in Commission proceedings, and it is also charged with making recommendations to the Commission with respect to standards, regulations, practices, or service of any public utility. S.C. Code Ann. Section 58-4-50(4) and (7) (Supp. 2005). (emphasis added). The ultimate decision as to what constitutes just and reasonable rates remains with the Commission.

B. The Settlement Agreement Fails to Address Several Issues.

This Settlement Agreement fails to speak to several issues which were either raised by the Parties or by TCWS's customers. These issues concern the Commission, but are not of sufficient magnitude to cause it to reject a settlement agreement which is otherwise just and reasonable. We believe that these issues should be dealt with on an administrative basis. However, we will briefly discuss these issues.

The Settlement Agreement specifically proposes the adoption of the prefiled direct testimony of ORS witness Willie J. Morgan. Settlement Agreement at 2. Beginning at page 10 of that testimony, Morgan describes a water loss problem with the Company, and, ultimately, calls for a water audit. TCWS provided information to Morgan stating that there is a difference between the purchased water quantity and the water sold to its customers. This difference is caused by leaks in the system, water used at the three wastewater treatment facilities, and an overflow issue at the Company's water tower. Morgan Testimony at 11. Morgan admits the Company's water loss does not directly

affect the Company's customers' bills, since their monthly water bills are based on the customers' usage registered through meter readings. He argues that water loss on the system could, however, indirectly impact the customers if the wholesaler, York County, raises wholesale rates to its customers. Id. However, he does not quantify the potential impact of the water loss on these ratepayers.

Morgan did not appear at the settlement hearing, and the Settlement Agreement does not directly address this issue. Further, no responsive testimony is before us. When this issue, among others, was raised by the Commission in the settlement hearing, this Commission heard different responses from the Parties. Counsel for TCWS stated that, "as part of the settlement, both parties agreed that all the issues have been resolved to their satisfaction." (emphasis added). Transcript of Settlement Hearing of August 29, 2006 at 15. However, counsel for ORS stated, "we believe the issues have either been resolved already or will be resolved through the Tega Cay Water Company's cooperation with the Office of Regulatory Staff." Id. at 23. (emphasis added). In additional discourse with the Commission, ORS counsel stated, "There are some issues that are still out there specifically as to the amount, where the water loss has been coming from. We don't know if it's a significant issue or not; however, we are, and the Company has agreed to continue to work with the Office of Regulatory Staff, to attempt to identify any potential water loss..." Id. at 31.

Although we are not convinced that the water loss issue was conclusively resolved, as shown by the statements of counsel cited above, we agree with Morgan that, at best, TCWS' water losses could have a potential indirect effect on the Company's

customers' bills. Accordingly, we believe that this issue may be dealt with administratively by another method, and that it should not prevent this Commission from approving the Settlement Agreement.

Likewise, the Company's customers complained of quality of service problems, such as poor quality of water, low water pressure, billing and meter reading inaccuracies, and sewerage backups at the July 11, 2006 evening public hearing. We would note that the Rebuttal Testimony of Company witness Haas attempts to address some of these issues, but his testimony does not respond to all of the stated quality of service problems. However, we are satisfied that the various matters of service quality may be addressed administratively through action outside of this Docket, such as through reports and inspections requested pursuant to S.C. Code Ann. Sections 58-3-190 and 58-3-200 (Supp. 2005) and other appropriate measures. This is not to say that the mechanisms provided by these statutes will necessarily be sufficient to address the Commission's concerns in other cases, but we believe that they will be adequate in the present case.

V. CONCLUSION

Accordingly, we have examined the Settlement Agreement in the present case, and we believe that the evidence provided is so deficient that it is within the Commission's discretion to deny the requested rate increases. However, in spite of the weakness of some of the evidence provided by the parties to support their settlement, we are convinced that the settlement rates, which are much lower than those originally applied for, should be approved. The increases described herein in Section III appear to be reasonable, despite the lack of strong supporting evidence in the areas described

above. Although we are troubled about the failure of the parties to provide all appropriate witnesses in support of the Settlement, we hold that the Settlement in this case produces rates which are just and reasonable. We would, however, urge the parties to make all appropriate witnesses available in the future to address Commission concerns that arise. Further, witnesses should be presented to address issues raised by the parties themselves which remain unresolved, such as the water audit question. With regard to the present case, we are satisfied that the other matters of concern to this Commission can be addressed administratively through action taken outside of this case.

VI. ORDER

IT IS THEREFORE ORDERED THAT:

1. The Stipulation between the parties is approved and adopted by this Commission as producing just and reasonable rates, and a reasonable rate of return to the Company. The rates imposed shall be those rates agreed upon in the Stipulation between the parties as shown in Order Exhibit 1 and shall be effective on and after the date of issuance of this Order.

2. The Company is entitled to the opportunity to earn a 9.40% return on equity, a 7.64% return on rate base, and a 6.95% operating margin.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

G. O'Neal Hamilton, Chairman

ATTEST:

C. Robert Moseley, Vice Chairman

(SEAL)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-97-WS

August 31, 2006

Application of Tega Cay Water Service, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service.	**SETTLEMENT AGREEMENT**

This Settlement Agreement is made by and between the Office of Regulatory Staff ("ORS") and Tega Cay Water Service, Inc. ("TCWS" or "the Company") (together referred to as the "Parties" or sometimes individually as "Party").

WHEREAS, the Company has prepared and filed an Application seeking an adjustment of its rates and charges and modifications to certain terms and conditions set out in its rate schedule for the provision of its water and sewer service;

WHEREAS, the above-captioned proceeding has been established by the South Carolina Public Service Commission ("Commission") pursuant to the procedure established in S.C. Code Ann. § 58-5-240 (Supp. 2005), and the Parties to this Settlement Agreement are the only parties of record in the above-captioned docket;

WHEREAS, since the filing of the Application, ORS has propounded numerous data requests to TCWS and the Company has provided those responses to ORS;

WHEREAS, ORS has audited the books and records of the Company relative to the matters raised in the Application and, in connection therewith, has requested of and received from the Company additional documentation;

WHEREAS, the Parties have varying legal positions regarding the issues in this case;

WHEREAS, the Parties have engaged in discussions to determine if a settlement of the issues would be in their best interests and, in the case of ORS, in the public interest; and

WHEREAS, following those discussions the Company has determined that its interests and ORS has determined that the public interest would be best served by stipulating to a comprehensive settlement of all issues pending in the above-captioned case under the terms and conditions set forth herein;

NOW, THEREFORE, the Parties hereby stipulate and agree to the following terms, which, if adopted by the Commission in its Order on the merits of this proceeding, will result in rates and terms and conditions of water and sewer service which are adequate, just, reasonable, nondiscriminatory, and supported by the evidence of record of this proceeding, and which will allow the Company the opportunity to earn a reasonable rate of return.

1. The Parties agree that no documentary evidence will be offered in the proceeding by the Parties other than: (1) the Application filed by the Company, (2) the exhibits to the testimony referenced in paragraph 2 below, and (3) this Settlement Agreement with Exhibits "A"- "E" attached hereto.

2. The Parties stipulate and agree to include in the hearing record of this case the pre-filed direct testimonies of Willie J. Morgan, Lena Sunardio and Bruce T. Haas, including all exhibits attached to said pre-filed testimonies, without objection, change, amendment, or cross-

examination. The Parties also stipulate and agree to include in the hearing record of this case without objection, change, amendment, or cross-examination the portion of the pre-filed rebuttal testimony of Bruce T. Haas attached hereto as Exhibit "A" and the testimony of Daniel Sullivan containing Revised Audit Exhibits DS-1 through DS-11 attached hereto as Exhibit "B". Further, the parties agree to include in the hearing record of this case without objection, change, amendment, or cross examination the Settlement testimony of witnesses B. R. Skelton, PhD. and Converse A. Chellis, III, CPA, attached hereto and incorporated herein by this reference as Exhibits "C"and "D".

3. The Parties stipulate and agree that the accounting exhibits prepared by ORS and attached to the testimony of Daniel Sullivan filed as Exhibit "B" hereto fairly and reasonably set forth the Company's operating expenses, pro forma adjustments, depreciation rates, rate base, return on equity at an agreed upon rate of 9.40%, revenue requirement, and rate of return on rate base.

4. The Parties stipulate and agree that the rate schedule attached hereto as Exhibit "E", including the rates and charges and terms and conditions of service, are fair, just, and reasonable. The Parties further stipulate and agree that the rates contained in said rate schedule are reasonably designed to allow the Company to provide service to its water and sewer customers at rates and terms and conditions of service that are fair, just and reasonable and the opportunity to recover the revenue required to earn a fair return on its investment..

5. ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (added by Act 175). S.C. Code § 58-4-10(B)(1) through (3) reads in part as follows:

> . . . 'public interest' means a balancing of the following:
> (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
> (2) economic development and job attraction and retention in South Carolina; and
> (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the agreement reached between the Parties serves the public interest as defined above. The terms of this Settlement Agreement balance the concerns of the using public while preserving the financial integrity of the Company. ORS also believes the Settlement Agreement promotes economic development within the State of South Carolina. The Parties stipulate and agree to these findings.

6. In its Application, the Company requested an increase in annual revenues of $196,542. As a compromise to their respective positions, the Parties stipulate and agree to an increase in annual revenues of $59,619, said increase to be based upon the adjustments reflected in Exhibit "B" and the return on equity stipulated to by the Parties in Paragraph 7 below.

7. The Company and ORS recognize the value of resolving this proceeding by settlement rather than by litigation and, therefore stipulate and agree for purposes of settlement in this case that a return on equity of 9.40% is just and reasonable under the specific circumstances of this case in the context of a comprehensive settlement.

8. The Parties further stipulate and agree that the stipulated testimony of record, the Application, and this Settlement Agreement conclusively demonstrate the following: (i) the proposed accounting and pro forma adjustments and depreciation rates shown in Revised Audit Exhibits DS-1 through DS-11 of Exhibit "B" hereto are fair and reasonable and should be

adopted by the Commission for ratemaking and reporting purposes; (ii) a return on common equity of 9.40 %, which yields a fair rate of return on rate base for the Company of 7.64%, an operating margin of 6.95%, and an annual increase in revenues of approximately $59,619, is fair, just, and reasonable when considered as a part of this stipulation and settlement agreement in its entirety; (iii) TCWS's services are adequate and being provided in accordance with the requirements set out in the Commission's rules and regulations pertaining to the provision of water sewer and sewer service, and (iv) TCWS's rates as proposed in this Settlement Agreement are fairly designed to equitably and reasonably recover the revenue requirement and are just and reasonable and should be adopted by the Commission for service rendered by the Company on and after October 3, 2006.

9. The Parties further agree and stipulate that the rate schedule attached hereto as Exhibit "E", including the rates and charges and the terms and conditions set forth therein, are just and reasonable, reasonably designed, and should be approved and adopted by the Commission.

10. TCWS agrees and stipulates that it will file with the Commission a performance bond for water service in the amount of $300,000 and a performance bond for sewer service in the amount of $350,000 by December 31, 2006. TCWS further agrees and stipulates that it will, no later than December 31, 2006, deliver to the State of South Carolina the sum of $10,822.92 pursuant to the terms of the South Carolina Uniform Unclaimed Property Act, which sum represents the balance of refund monies posted to inactive accounts per Order Nos. 1999-191, 1999-457 and 1999-733 in TCWS's last rate case.

11. The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of the above-captioned proceeding and to take no action inconsistent with its adoption by the Commission. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

12. The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair, or prejudice their arguments made or positions held in other proceedings. If the Commission should decline to approve the agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement without penalty or obligation.

13. This Settlement Agreement shall be interpreted according to South Carolina law.

14. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement

and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

WE AGREE:

Representing the South Carolina Office of Regulatory Staff

Wendy B. Cartledge

Wendy B. Cartledge, Esquire
Jeffrey M. Nelson, Esquire
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WE AGREE:

Representing Tega Cay Water Service, Inc.

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BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-97-WS

IN RE: Application of Tega Cay Water Service, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service.	**REBUTTAL TESTIMONY OF BRUCE T. HAAS**

Q. ARE YOU THE SAME BRUCE T. HAAS THAT HAS PREFILED DIRECT TESTIMONY IN THIS CASE?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS PROCEEDING, MR. HAAS?

A. The purpose of my rebuttal testimony is to respond on behalf of Tega Cay Water Service, Inc., or "TCWS", to some of the specific and general comments our customers made during the night hearing in this matter.

Q. WHAT CUSTOMER CONCERNS EXPRESSED AT THE NIGHT HEARING DO YOU WISH TO RESPOND TO, MR. HAAS?

A. Two of our customers complained of recent incidences of low water pressure. The reason these customers experienced low pressure was that the Company took its elevated

storage facility off-line so that it could be painted. While we do regret the inconvenience, the painting was necessary to maintain the system.

Two of our customers complained about faulty meter readings and inconsistent billing dates. There were in fact occasions during the test year when personnel employed by our contract meter reader did not perform their duties in a timely and proper manner. At the Company's behest, our contractor discharged its personnel who were responsible and I believe the problem has been resolved. Of course, we have adjusted the bills of customers who were affected by erroneous meter readings and regret the inconvenience that it caused.

Three of our customers complained about water clarity or particles. As the Commission is aware, the Company purchases bulk water from York County. Occasionally, line flushing can introduce particles which create an unpleasant appearance that cannot be avoided. Our water meets all DHEC and EPA standards for consumption. Whenever a customer complains about the appearance of the water and we have not been flushing lines, we do investigate.

Two of our customers complained about sanitary sewer overflows, or SSOs. One customer stated that the Company had thirteen SSOs in an eighteen month period and asserted that York County only had 5 SSOs and Fort Mill none during that same period. This customer also suggested that the SSOs were endangering the health of residents. I would like to address these issues by explaining to the Commission what constitutes an

SSO, how DHEC regulates them, and why the comparisons made are not valid. An SSO occurs whenever there is an unauthorized discharge of wastewater. These can occur from lift stations, manholes or mains. However, an SSO is only required to be reported to DHEC in one of two circumstances, which are when the discharge exceeds five hundred gallons or when the discharge reaches a stream or other body of water. As the Commission may have noticed when it visited Tega Cay for the night hearing, the topography is very hilly and the property is situated on the shores of Lake Wylie. The majority of the Company's main sewer lines and lift stations are located between the residences and the shore lines. Accordingly, whenever an overflow occurs, there is a good chance that the wastewater will reach the lake, resulting in a reportable discharge. Based upon my knowledge of York County, neither the York County nor Fort Mill systems have such proximity to a stream or other body of water. In fact, the customer testifying on this point stated that York County's spills were from a force main on Highway 49 and one in a residential development the County serves located some distance from the lake. Additionally, although York County has a larger number of lift stations than does TCWS, they are not concentrated in a single, hilly area like the lift stations serving Tega Cay which makes immediate access for repairs difficult. So, I do not believe that the comparison this customer seeks to draw is valid. With respect to the putative health issues, I would note that none of these SSOs resulted in a fine of the Company by DHEC. As this customer noted, ten of the thirteen SSOs were caused by line blockages. Most of these were a combination of roots or grease. Grease collection and root intrusion into lines are usually not discovered until an SSO occurs unless it is

revealed in the course of television inspection of our lines. We try to televise 10% of our lines every year. Regarding our alarm systems for overflows, we have installed telemetry devices at our lift stations to supplement the audible and visual alarms. And, as one of the customers noted, we have instituted a voice reach program that contacts customers telephonically to alert them whenever there is a problem on the system and that program is working.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

THE OFFICE OF REGULATORY STAFF

SETTLEMENT TESTIMONY

OF

DANIEL F. SULLIVAN

DOCKET NO. 2006-97-W/S
APPLICATION OF
TEGA CAY WATER SERVICE, INC.
FOR ADJUSTMENT OF RATES AND CHARGES

SETTLEMENT TESTIMONY OF DANIEL F. SULLIVAN

FOR

THE OFFICE OF REGULATORY STAFF

DOCKET NO. 2006-97-W/S

IN RE: TEGA CAY WATER SERVICE, INC.

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Daniel F. Sullivan. My business address is 1441 Main Street, Suite 300, Columbia, South Carolina, 29201. I am employed by the Office of Regulatory Staff ("ORS") as an Auditor.

Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND YOUR BUSINESS EXPERIENCE.

A. I received a B.S. Degree in Business Administration, with a major in Accounting from the University of South Carolina in December 1998. From February 1999 to February 2005, I was employed with the South Carolina State Auditor's Office. In that capacity, I performed audits and reviews of cost reports filed by institutional providers of Medicaid services for the South Carolina Department of Health and Human Services. The primary purpose of those audits and reviews was to establish the applicable reimbursement rates to be paid to Medicaid providers for services rendered to qualified Medicaid recipients. In February 2005, I began my employment with ORS.

Q. WHAT IS THE PURPOSE OF YOUR SETTLEMENT TESTIMONY INVOLVING TEGA CAY WATER SERVICE, INC?

A. The purpose of my settlement testimony is to set forth the adjustments agreed upon in the settlement agreement by ORS and Tega Cay Water Service, Inc. ("TCWS") in this docket.

Q. PLEASE IDENTIFY THE EXHIBITS ATTACHED TO YOUR SETTLEMENT TESTIMONY.

A. I have attached ORS's Settlement Audit Exhibits DFS-1 through DFS-11. The Settlement Audit Exhibits were either prepared by me or were prepared under my direction and supervision in compliance with recognized accounting and regulatory procedures for water and wastewater utility rate cases.

Q. PLEASE EXPLAIN THE CONTENTS OF THE REVISED AUDIT EXHIBITS.

A. The Settlement Audit Exhibits reflect a return on equity (ROE) of 9.40% and a return on rate base of 7.64%. As part of the settlement, the Company agreed to accept ORS's adjustments, as reflected in the attached Settlement Audit Exhibits, including the removal of the plant acquisition adjustment (PAA) from TCWS rate base (Adjustment #6) and from the calculation of net income for return through amortization of the PAA (Adjustment #21). Additionally, as part of the settlement, the Company agreed to the exclusion of the 4% salary increase requested by TCWS.

Q: WHAT IS THE DOLLAR AMOUNT OF THE INCREASE PROPOSED BY THE SETTLEMENT AGREEMENT?

A: The Company requested an increase in annual net operating revenues of $196,542 in its application. As a compromise, ORS and the Company agree to an increase in annual net operating revenues of $59,619. This amount is approximately one-third of the requested increase.

Q. DOES THIS CONCLUDE YOUR SETTLEMENT TESTIMONY?

A. Yes, it does.

Settlement Audit Exhibit DFS-1

Tega Cay Water Service, Inc.
Operating Experience, Rate Base and Rates of Return
For the Test Year Ended September 30, 2005
Combined Operations

Description	(1) Per Company Books $	(2) Additional Adjustments Docket No. 1996-137-WS $	(3) Adjusted Per Books $	(4) Accounting and Pro Forma Adjustments $	(5) As Adjusted Present $	(6) Proposed Increase $	(7) After Proposed Increase $
Operating Revenues:							
Service Revenue - Water	346,686	0	346,686	132 (H)	346,818	1,201 (X)	348,019
Service Revenue - Sewer	600,216	0	600,216	1,734 (H)	601,950	58,615 (X)	660,565
Miscellaneous Revenues	14,148	0	14,148	0	14,148	0	14,148
Uncollectible Accounts	(3,158)	0	(3,158)	0	(3,158)	(197) (Y)	(3,355)
					0		
Total Operating Revenues	957,892	0	957,892	1,866	959,758	59,619	1,019,377
Operating Expenses:							
Maintenance Expenses	388,252	0	388,252	3,214 (I)	391,466	0	391,466
General Expenses	186,382	0	186,382	56,164 (J)	242,546	0	242,546
Depreciation Expense	245,264	0	245,264	(35,738) (K)	209,526	0	209,526
Taxes Other Than Income	206,869	(3,000) (A)	203,869	(81,629) (L)	122,240	673 (Z)	122,913
Income Taxes - State	1,338	958 (B)	2,296	364 (M)	2,660	2,947 (AA)	5,607
Income Taxes - Federal	58,992	(43,724) (C)	15,268	2,420 (N)	17,688	19,600 (AB)	37,288
Amortization of PAA	0	0	0	0 (O)	0	0	0
Amortization of CIAC	(171,782)	0	(171,782)	42,642 (P)	(129,140)	0	(129,140)
Total Operating Expenses	915,315	(45,766)	869,549	(12,563)	856,986	23,221	880,207
Total Operating Income	42,577	45,766	88,343	14,429	102,772	36,398	139,170
Interest During Construction	80	0	80	(80) (Q)	0	0	0
Customer Growth	0	0	0	1,207 (R)	1,207	429 (AC)	1,636
Net Income for Return	42,657	45,766	88,423	15,556	103,979	36,827	140,806
Original Cost Rate Base:							
Gross Plant In Service	12,042,383	(352,044) (D)	11,690,339	242,356 (S)	11,932,695	0	11,932,695
Accumulated Depreciation	(2,911,225)	90,318 (E)	(2,820,907)	54,657 (T)	(2,766,250)	0	(2,766,250)
					0		
Net Plant in Service	9,131,158	(261,726)	8,869,432	297,013	9,166,445	0	9,166,445
Cash Working Capital	71,830	0	71,830	7,422 (U)	79,252	0	79,252
Contributions in Aid of Construction	(6,815,144)	0	(6,815,144)	(42,642) (V)	(6,857,786)	0	(6,857,786)
Accumulated Deferred Income Taxes	(504,319)	0	(504,319)	0	(504,319)	0	(504,319)
Customer Deposits	(58,630)	0	(58,630)	0	(58,630)	0	(58,630)
Plant Acquisition Adjustment	284,833	(284,833) (F)	0	0	0	0	0
Water Service Corporation - Rate Base	17,871	0	17,871	0	17,871	0	17,871
					0		
Total Rate Base	2,127,599	(546,559)	1,581,040	261,793	1,842,833	0	1,842,833
Return on Rate Base	2.00%		5.59%		5.64%		7.64%
Interest Expense	167,102	(107,114) (G)	59,988	9,933 (W)	69,921		69,921

Settlement Audit Exhibit DFS-2

Tega Cay Water Service, Inc.
Operating Experience, Rate Base and Rates of Return
For the Test Year Ended September 30, 2005
Water Operations

Description	(1) Per Company Books $	(2) Additional Adjustments Docket No. 1996-137-WS $	(3) Adjusted Per Books $	(4) Accounting and Pro Forma Adjustments $	(5) As Adjusted Present $	(6) Proposed Increase $	(7) After Proposed Increase $
Operating Revenues:							
Service Revenue - Water	346,686	0	346,686	132 (H)	346,818	1,201 (X)	348,019
Miscellaneous Revenues	6,343	0	6,343	0	6,343	0	6,343
Uncollectible Accounts	(1,146)	0	(1,146)	0	(1,146)	(4) (Y)	(1,150)
Total Operating Revenues	351,883	0	351,883	132	352,015	1,197	353,212
Operating Expenses:							
Maintenance Expenses	111,285	0	111,285	1,658 (I)	112,943	0	112,943
General Expenses	96,192	0	96,192	28,535 (J)	124,727	0	124,727
Depreciation Expense	64,638	0	64,638	2,374 (K)	67,012	0	67,012
Taxes Other Than Income	105,160	(3,000) (A)	102,160	(42,129) (L)	60,031	14 (Z)	60,045
Income Taxes - State	486	409 (B)	895	(80) (M)	815	59 (AA)	874
Income Taxes - Federal	21,408	(15,454) (C)	5,954	(537) (N)	5,417	394 (AB)	5,811
Amortization of PAA	0	0	0	0 (O)	0	0	0
Amortization of CIAC	(42,344)	0	(42,344)	10,485 (P)	(31,859)	0	(31,859)
					0		
Total Operating Expenses	356,825	(18,045)	338,780	306	339,086	466	339,552
					0		
Total Operating Income	(4,942)	18,045	13,103	(174)	12,929	731	13,660
					0		
Interest During Construction	20	0	20	(20) (Q)	0	0	0
Customer Growth	0	0	0	147 (R)	147	8 (AC)	155
					0		
Net Income for Return	(4,922)	18,045	13,123	(47)	13,076	739	13,815
Original Cost Rate Base:							
Gross Plant in Service	3,003,103	(352,044) (D)	2,651,059	22,926 (S)	2,673,985	0	2,673,985
Accumulated Depreciation	(731,857)	90,318 (E)	(641,539)	5,470 (T)	(636,069)	0	(636,069)
					0		
Net Plant in Service	2,271,246	(261,726)	2,009,520	28,396	2,037,916	0	2,037,916
Cash Working Capital	25,935	0	25,935	3,774 (U)	29,709	0	29,709
Contributions in Aid of Construction	(1,686,534)	0	(1,686,534)	(10,485) (V)	(1,697,019)	0	(1,697,019)
Accumulated Deferred Income Taxes	(273,990)	0	(273,990)	0	(273,990)	0	(273,990)
Customer Deposits	(30,259)	0	(30,259)	0	(30,259)	0	(30,259)
Plant Acquisition Adjustment	39,157	(39,157) (F)	0	0	0	0	0
Water Service Corporation - Rate Base	9,223	0	9,223	0	9,223	0	9,223
					0		
Total Rate Base	354,778	(300,883)	53,895	21,685	75,580	0	75,580
Return on Rate Base	-1.39%		24.35%		17.30%		18.28%
Interest Expense	41,993	(39,948) (G)	2,045	823 (W)	2,868		2,868

Settlement Audit Exhibit DFS-3

Tega Cay Water Service, Inc.
Operating Experience, Rate Base and Rates of Return
For the Test Year Ended September 30, 2005
Sewer Operations

Description	(1) Per Company Books $	(2) Additional Adjustments Docket No. 1996-137-WS $	(3) Adjusted Per Books $	(4) Accounting and Pro Forma Adjustments $	(5) As Adjusted Present $	(6) Proposed Increase $	(7) After Proposed Increase $
Operating Revenues:							
Service Revenue - Sewer	600,216	0	600,216	1,734 (H)	601,950	58,615 (X)	660,565
Miscellaneous Revenues	7,805	0	7,805	0	7,805	0	7,805
Uncollectible Accounts	(2,012)	0	(2,012)	0	(2,012)	(193) (Y)	(2,205)
Total Operating Revenues	606,009	0	606,009	1,734	607,743	58,422	666,165
					0		
Operating Expenses:					0		
Maintenance Expenses	276,967	0	276,967	1,556 (I)	278,523	0	278,523
General Expenses	90,190	0	90,190	27,629 (J)	117,819	0	117,819
Depreciation Expense	180,626	0	180,626	(38,112) (K)	142,514	0	142,514
Taxes Other Than Income	101,709	0 (A)	101,709	(39,500) (L)	62,209	660 (Z)	62,869
Income Taxes - State	852	549 (B)	1,401	444 (M)	1,845	2,888 (AA)	4,733
Income Taxes - Federal	37,584	(28,270) (C)	9,314	2,957 (N)	12,271	19,206 (AB)	31,477
Amortization of PAA	0	0	0	0 (O)	0	0	0
Amortization of CIAC	(129,438)	0	(129,438)	32,157 (P)	(97,281)	0	(97,281)
Total Operating Expenses	558,490	(27,721)	530,769	(12,869)	517,900	22,754	540,654
Total Operating Income	47,519	27,721	75,240	14,603	89,843	35,668	125,511
Interest During Construction	60	0	60	(60) (Q)	0	0	0
Customer Growth	0	0	0	1,060 (R)	1,060	421 (AC)	1,481
Net Income for Return	47,579	27,721	75,300	15,603	90,903	36,089	126,992
Original Cost Rate Base:							
Gross Plant in Service	9,039,280	0 (D)	9,039,280	219,430 (S)	9,258,710	0	9,258,710
Accumulated Depreciation	(2,179,368)	0 (E)	(2,179,368)	49,187 (T)	(2,130,181)	0	(2,130,181)
					0		
Net Plant In Service	6,859,912	0	6,859,912	268,617	7,128,529	0	7,128,529
Cash Working Capital	45,895	0	45,895	3,648 (U)	49,543	0	49,543
Contributions in Aid of Construction	(5,128,610)	0	(5,128,610)	(32,157) (V)	(5,160,767)	0	(5,160,767)
Accumulated Deferred Income Taxes	(230,329)	0	(230,329)	0	(230,329)	0	(230,329)
Customer Deposits	(28,371)	0	(28,371)	0	(28,371)	0	(28,371)
Plant Acquisition Adjustment	245,676	(245,676) (F)	0	0	0	0	0
Water Service Corporation - Rate Base	8,648	0	8,648	0	8,648	0	8,648
					0		
Total Rate Base	1,772,821	(245,676)	1,527,145	240,108	1,767,253	0	1,767,253
Return on Rate Base	2.68%		4.93%		5.14%		7.19%
Interest Expense	125,109	(67,166) (G)	57,943	9,110 (W)	67,053		67,053

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
Adjustments From Docket No. 1996-137-WS			
(A) Taxes Other Than Income			
1 ORS proposes to remove property taxes associated with wells no longer used and useful			
Per ORS	(3,000)	(3,000)	0
Per TCWS	0	0	0
(B) Income Taxes - State			
2 ORS proposes to adjust for state income taxes due to the adjustments from Docket No. 1996-137-WS.			
Per ORS	958	409	549
Per TCWS	0	0	0
(C) Income Taxes - Federal			
3 ORS propose to adjust for federal income taxes due to the adjustments from Docket No. 1996-137-WS.			
Per ORS	(43,724)	(15,454)	(28,270)
Per TCWS	0	0	0
(D) Gross Plant In Service			
4 ORS and TCWS propose to adjust plant in service by ($352,044) for the removal of wells deemed not used and useful.			
Per ORS	(352,044)	(352,044)	0
Per TCWS	(352,044)	(352,044)	0
(E) Accumulated Depreciation			
5 ORS and TCWS propose to adjust accumulated depreciation by $90,318 for the removal of wells deemed not used and useful			
Per ORS	90,318	90,318	0
Per TCWS	90,318	90,318	0

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
(F) Plant Acquisition Adjustment			
6 ORS proposes to remove the plant acquisition adjustment since it was removed by staff and TCWS and approved by the PSC in the previous rate case proceeding.			
Per ORS	(284,833)	(39,157)	(245,676)
Per TCWS	0	0	0
(G) Interest on Debt			
7 ORS proposes to adjust interest on debt using a 59.10% / 40.90% debt / equity ratio and a 6.42% cost of debt. ORS proposes to compute allowable interest expense as adjusted per books.			
Per ORS	(107,114)	(39,948)	(67,166)
Per TCWS	0	0	0
Accounting and Pro Forma Adjustments			
(H) Operating Revenues			
8 ORS and TCWS propose to adjust test year operating revenues to agree with test year consumption data.			
Per ORS	1,866	132	1,734
Per TCWS	1,765	24	1,741
(I) Maintenance Expenses			
9 ORS and TCWS propose to adjust operators' salaries. ORS proposes to annualize operators' salary expenses using wage rates as of May 2006 and wage allocation factors as of September 2005. ORS did not include a 4% cost of living increase since this amount was not known and measurable at the end of the audit. TCWS included a 4% cost of living increase.			
Per ORS	3,876	2,000	1,876
Per TCWS	11,183	5,770	5,413

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
10 TCWS proposes to amortize deferred operations and maintenance charges over 5 years. ORS does not propose to amortize deferred operations and maintenance charges since projects were not started and expenses were not incurred during the test year.			
Per ORS	0	0	0
Per TCWS	24,960	24,960	0
11 ORS and TCWS propose to adjust operating expense charged to plant to reflect the proposed increase in the wage adjustment ORS computed a factor of 12.53% using actual test year data. TCWS used a capitalization factor of 11.58% which was based on annualized wages.			
Per ORS	(662)	(342)	(320)
Per TCWS	310	160	150
Total Maintenance Expenses	**3,214**	**1,658**	**1,556**
(J) General Expenses			
12 ORS and TCWS propose to adjust office salary expenses. ORS annualized salaries using wage rates as of May 2006 and wage allocations as of September 2005. ORS did not include a 4% cost of living increase since this amount was not known and measurable at the end of the audit. TCWS included a 4% cost of living increase.			
Per ORS	8,561	4,418	4,143
Per TCWS	11,447	5,907	5,540
13 ORS and TCWS propose to include current rate case expenses amortized over a three-year period. ORS proposes to include TCWS's portion of the Utilities Inc. Management Audit costs amortized over a three-year period. ORS adjusted rate case expenses for actual documented expenses and also included $3,808 in water and $4,442 in sewer for the additional letters of credit.			
Per ORS	46,196	23,391	22,805
Per TCWS	57,387	29,617	27,770

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
14 ORS and TCWS propose to adjust for pension and other benefits associated with the wage increase.			
Per ORS	1,810	934	876
Per TCWS	(1,946)	(1,005)	(941)
15 ORS proposes to remove one half of Chamber of Commerce dues ($260) and a 7 day personal newspaper subscription ($143) to the Charlotte Observer, for total nonallowable expenses for ratemaking purposes of ($403).			
Per ORS	(403)	(208)	(195)
Per TCWS	0	0	0
Total General Expenses	**56,164**	**28,535**	**27,629**
(K) Depreciation Expense			
16 TCWS proposes to annualize depreciation expense using estimated plant additions and a 1.5% depreciation rate. ORS proposes to annualize depreciation expense for known and measurable plant in service using a 1.5% depreciation rate. Both TCWS and ORS include extraordinary retirement of the wells as part of the adjustment to depreciation expense. See Settlement Audit Exhibit DFS-5 for details.			
Per ORS	**(35,738)**	**2,374**	**(38,112)**
Per TCWS	(26,984)	8,945	(35,929)
(L) Taxes Other Than Income			
17 ORS and TCWS propose to adjust for payroll taxes associated with the wage adjustment.			
Per ORS	(100)	(52)	(48)
Per TCWS	565	291	274
18 ORS and TCWS propose to remove a tax accrual for property taxes to reflect actual test year expense.			
Per ORS	(81,529)	(42,077)	(39,452)
Per TCWS	(81,529)	(42,077)	(39,452)
Total Taxes Other Than Income	**(81,629)**	**(42,129)**	**(39,500)**

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
(M) Income Taxes - State - As Adjusted			
19 ORS and TCWS propose to adjust state income taxes after accounting and pro forma adjustments. See Settlement Audit Exhibit DFS - 6.			
Per ORS	**364**	**(80)**	**444**
Per TCWS	(2,585)	(2,266)	(319)
(N) Income Taxes - Federal - As Adjusted			
20 ORS and TCWS propose to adjust federal income taxes after accounting and pro forma adjustments. See Settlement Audit Exhibit DFS - 6.			
Per ORS	**2,420**	**(537)**	**2,957**
Per TCWS	(67,282)	(33,247)	(34,035)
(O) Amortization of Plant Acquisition Adjustment			
21 TCWS proposes to include amortization expense of $5,210 associated with a request for a plant acquisition adjustment. ORS does not propose an amortization adjustment since ORS proposes to remove the plant acquisition adjustment.			
Per ORS	**0**	**0**	**0**
Per TCWS	5,210	716	4,494
(P) Amortization of Contributions in Aid of Construction (CIAC)			
22 ORS and TCWS propose to annualize amortization of CIAC as of September 30, 2005. The purpose of this adjustment is to properly calculate amortization expense associated with CIAC. ORS and TCWS amortized CIAC using a 1.5% rate.			
Per ORS	**42,642**	**10,485**	**32,157**
Per TCWS	45,369	11,394	33,975

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
(Q) Interest During Construction (IDC)			
23 TCWS and ORS propose to eliminate IDC for rate making purposes. TCWS and ORS did not include construction work in progress in rate base and therefore IDC is eliminated as an addition to net income.			
Per ORS	(80)	(20)	(60)
Per TCWS	(80)	(20)	(60)
(R) Customer Growth			
24 ORS proposes to adjust for customer growth after accounting and pro forma adjustments. ORS used customer units as of June 2006, since plant additions have been included to that time period. See Settlement Audit Exhibit DFS -7.			
Per ORS	1,207	147	1,060
Per TCWS	0	0	0
(S) Gross Plant In Service			
25 ORS and TCWS propose to adjust for pro forma plant additions and retirements. TCWS adjustment is based on estimated general ledger additions, capitalized time additions and pro forma plant additions and retirements. ORS adjustment is based on known and measurable plant in service including general ledger additions, capitalized time additions and pro forma additions and retirements as of June 2006.			
Per ORS	241,694	22,584	219,110
Per TCWS	313,409	91,084	222,325
26 ORS proposes to capitalize wages, taxes, and benefits as a result of the payroll adjustment. ORS capitalized 12.53% of the wage adjustment.			
Per ORS	662	342	320
Per TCWS	0	0	0
Total Gross Plant In Service	**242,356**	**22,926**	**219,430**

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
(T) Accumulated Depreciation			
27 TCWS proposes to adjust accumulated depreciation using estimated plant additions and retirements. ORS proposes to reduce accumulated depreciation for the annualized depreciation expense adjustment of $35,738 and actual retirements from October 2005 - June 2006 of $18,919.			
Per ORS	54,657	5,470	49,187
Per TCWS	12,380	15,992	(3,612)
(U) Cash Working Capital			
28 TCWS and ORS propose to adjust cash working capital after accounting and pro forma adjustments. See Settlement Audit Exhibit DFS-8.			
Per ORS	7,422	3,774	3,648
Per TCWS	12,917	8,176	4,741
(V) Contributions in Aid of Construction			
29 ORS proposes to adjust contributions in aid of construction to reflect the difference in amortization using a 1.5% amortization rate versus a 2% amortization rate			
Per ORS	(42,642)	(10,485)	(32,157)
Per TCWS	0	0	0
(W) Interest Expense			
30 ORS and TCWS propose to adjust interest on debt using a 59.10% / 40.90% debt / equity ratio and a 6.42% cost of debt. ORS proposes to compute allowable interest expense as adjusted present and after the proposed increase rate base. See Settlement Audit Exhibit DFS -9.			
Per ORS	9,933	823	9,110
Per TCWS	(83,468)	(34,091)	(49,377)

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
(X) Operating Revenues - Proposed Increase			
31 ORS and TCWS propose an increase in operating revenues.			
Per ORS	**59,816**	**1,201**	**58,615**
Per TCWS	197,199	52,368	144,831
(Y) Uncollectible Accounts - Proposed Increase			
32 ORS and TCWS propose to adjust uncollectible accounts expense for the proposed revenue using an uncollectible rate of .33% for water and sewer.			
Per ORS	**(197)**	**(4)**	**(193)**
Per TCWS	(657)	(173)	(484)
(Z) Taxes Other Than Income - Proposed Increased			
33 ORS and TCWS propose to adjust utility/commission tax (.0082524) and gross receipts taxes (.003) for the proposed revenue using a combined factor of .0112524.			
Per ORS	**673**	**14**	**660**
Per TCWS	2,215	588	1,627
(AA) Income Taxes - State - Proposed Increase			
34 TCWS records income taxes using current tax rates on calculated taxable income. ORS proposes to compute income taxes after the proposed increase.			
Per ORS	**2,947**	**59**	**2,888**
Per TCWS	9,716	2,580	7,136
(AB) Income Taxes - Federal - Proposed Increase			
35 TCWS records income taxes using current tax rates on calculated taxable income. ORS proposes to compute income taxes after the proposed increase.			
Per ORS	**19,600**	**394**	**19,206**
Per TCWS	64,614	17,159	47,455

Settlement Audit Exhibit DFS-4

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

Description	Combined	Water	Sewer
	$	$	$
(AC) Customer Growth			
36 ORS proposes to adjust customer growth for the effect of the proposed increase. ORS used customer units as of June 2006, since plant additions have been extended to that time period. See Settlement Audit Exhibit DFS -7.			
Per ORS	429	8	421
Per TCWS	0	0	0

Settlement Audit Exhibit DFS-5

Tega Cay Water Service, Inc.
Depreciation Expense Adjustment
Test Year Ended September 30, 2005

	Combined	Water	Sewer
	$	$	$
Gross Plant @ September 30, 2005	12,042,383	3,003,103	9,039,280
ADD:			
Pro Forma Plant, Retirements, Capitalized Time and General Ledger Additions as of June 2006	242,356	22,926	219,430
LESS:			
Organization	(244,495)	(125,040)	(119,455)
Land	(8,989)	(1,869)	(7,120)
Vehicles	(97,606)	(50,374)	(47,232)
Wells	(352,044)	(352,044)	0
Net Plant	**11,581,605**	**2,496,702**	**9,084,903**
Plant Depreciation @ 1.5% (66.7 years)	173,725	37,451	136,274
Vehicles as of June 2006	97,606	50,374	47,232
Less: Fully Depreciated Vehicles	(61,529)	(31,755)	(29,774)
	36,077	18,619	17,458
Vehicle Depreciation @ 25% (4 years)	9,019	4,655	4,364
WSC Depreciation Allocation	2,792	1,441	1,351
Regional Office Depreciation Allocation	1,084	559	525
Extraordinary Retirement (Wells)	22,906	22,906	0
Total Depreciation	**209,526**	**67,012**	**142,514**
Less: Per Books Depreciation	245,264	64,638	180,626
ORS Adjustment	**(35,738)**	**2,374**	**(38,112)**
Company's Adjustment	(26,984)	8,945	(35,929)
Contributions in Aid of Construction			
CIAC @ September 30, 2005	(8,609,368)	(2,123,950)	(6,485,418)
Amortization %	1.50%	1.50%	1.50%
Amortization Amount	(129,141)	(31,859)	(97,281)
Per Book Amount	(171,782)	(42,344)	(129,438)
ORS Adjustment	**42,642**	**10,485**	**32,157**
Company's Adjustment	45,369	11,394	33,975

Settlement Audit Exhibit DFS-6

Tega Cay Water Service, Inc.
Computation of Income Taxes
For the Test Year Ended September 30, 2005

	As Adjusted - Per Books		
	Combined Operations	Water Operations	Sewer Operations
Operating Revenue As Adjusted	957,892	351,883	606,009
Operating Expenses As Adjusted	851,985	331,931	520,054
Net Operating Income Before Taxes	105,907	19,952	85,955
Less: Annualized Interest Expense	59,988	2,045	57,943
Taxable Income - State	45,919	17,907	28,012
State Income Tax %	5.0%	5.0%	5.0%
State Income Taxes	2,296	895	1,401
Less: State Income Taxes Per Book	1,338	486	852
Adjustment to State Income Taxes	958	409	549
Taxable Income - Federal	43,623	17,012	26,611
Federal Income Taxes %	35.0%	35.0%	35.0%
Federal Income Taxes	15,268	5,954	9,314
Less: Federal Income Taxes Per Book	58,992	21,408	37,584
Adjustment to Federal Income Taxes	(43,724)	(15,454)	(28,270)

	As Adjusted - Present		
	Combined Operations	Water Operations	Sewer Operations
Operating Revenue As Adjusted	959,758	352,015	607,743
Operating Expenses As Adjusted	836,638	332,854	503,784
Net Operating Income Before Taxes	123,120	19,161	103,959
Less: Annualized Interest Expense	69,921	2,868	67,053
Taxable Income - State	53,199	16,293	36,906
State Income Tax %	5.0%	5.0%	5.0%
State Income Taxes	2,660	815	1,845
Less: State Income Taxes As Adjusted Per Book	2,296	895	1,401
Adjustment to State Income Taxes	364	(80)	444
Taxable Income - Federal	50,539	15,478	35,061
Federal Income Taxes %	35.0%	35.0%	35.0%
Federal Income Taxes	17,688	5,417	12,271
Less: Federal Income Taxes As Adjusted Per Book	15,268	5,954	9,314
Adjustment to Federal Income Taxes	2,420	(537)	2,957

Settlement Audit Exhibit DFS-6

Tega Cay Water Service, Inc.
Computation of Income Taxes
For the Test Year Ended September 30, 2005

Settlement Audit Exhibit DFS-6

Tega Cay Water Service, Inc.
Computation of Income Taxes
For the Test Year Ended September 30, 2005

	After Proposed Increase		
	Combined Operations	Water Operations	Sewer Operations
Operating Revenue After Proposed Increase	1,019,377	353,212	666,165
Operating Expenses After Proposed Increase	837,311	332,868	504,444
Net Operating Income Before Taxes	182,066	20,344	161,721
Less: Annualized Interest Expense	69,921	2,868	67,053
Taxable Income - State	112,145	17,476	94,668
State Income Tax %	5.0%	5.0%	5.0%
State Income Taxes	5,607	874	4,733
Less: State Income Taxes As Adjusted - Present	2,660	815	1,845
Adjustment to State Income Taxes	2,947	59	2,888
Taxable Income - Federal	106,538	16,603	89,935
Federal Income Taxes %	35.0%	35.0%	35.0%
Federal Income Taxes	37,288	5,811	31,477
Less: Federal Income Taxes As Adjusted - Present	17,688	5,417	12,271
Adjustment to Federal Income Taxes	19,600	394	19,206

Settlement Audit Exhibit DFS-7

Tega Cay Water Service, Inc.
Customer Growth Computation
Test Year Ended September 30, 2005

Combined Operations:		(1) As Adjusted Present	(2) Effect of Proposed Increase	(3) After Increase
Description		$	$	$
Water Customer Growth		147	8	156
Sewer Customer Growth		1,060	421	1,481
Combined Customer Growth		1,207	429	1,637
Number of Customer Units:				
Beginning	3,407	**Formula:**		
Ending	3,487	Ending - Average	= 40	= 1.16%
Average	3,447	Average	3,447	
Water Operations:				
Total Operating Income		12,929	731	13,660
Growth Factor		1.14%	1.14%	1.14%
Customer Growth		147	8	156
Number of Customer Units:				
Beginning	1,738	**Formula:**		
Ending	1,778	Ending - Average	= 20	= 1.14%
Average	1,758	Average	1,758	
Sewer Operations:				
Total Operating Income		89,843	35,668	125,511
Growth Factor		1.18%	1.18%	1.18%
Customer Growth		1,060	421	1,481
Number of Customer Units:				
Beginning	1,669	**Formula:**		
Ending	1,709	Ending - Average	= 20	= 1.18%
Average	1,689	Average	1,689	

Note: Combined Customer Growth equals Water plus Sewer Customer Growth

Beginning Customer Units @ 10/2004
Ending Customer Units @ 6/2006

Settlement Audit Exhibit DFS-8

Tega Cay Water Service, Inc.
Cash Working Capital Allowance
For the Test Year Ended September 30, 2005

	Combined Operations	Water Operations	Sewer Operations
Maintenance Expenses - As Adjusted	391,466	112,943	278,523
General Expenses - As Adjusted	242,546	124,727	117,819
Total Expenses for Computation	634,012	237,670	396,342
Allowable Rate	12.50%	12.50%	12.50%
Computed Cash Working Capital - As Adjusted	79,252	29,709	49,543
Cash Working Capital - Per Books	71,830	25,935	45,895
Cash Working Capital Adjustment - ORS	**7,422**	**3,774**	**3,648**
Cash Working Capital Adjustment - CWS	12,917	8,176	4,741

Settlement Audit Exhibit DFS-9

Tega Cay Water Service, Inc.
Return on Common Equity
Capital Structure at September 30, 2005

Combined

Description	Capital Structure	Ratio	As Adjusted--Present: Rate Base	As Adjusted--Present: Embedded Cost/Return	As Adjusted--Present: Overall Cost/Return	As Adjusted--Present: Income For Return	After Proposed Increase: Rate Base	After Proposed Increase: Embedded Cost/Return	After Proposed Increase: Overall Cost/Return	After Proposed Increase: Income For Return
	$	%	$	%	%	$	$	%	%	$
Long-Term Debt	136,789,585	59.10%	1,089,114	6.42%	3.79%	69,922	1,089,114	6.42%	3.79%	69,922
Common Equity	94,651,855	40.90%	753,719	4.52%	1.86%	34,057	753,719	9.40%	3.85%	70,884
Totals	231,441,440	100.00%	1,842,833		5.65%	103,979	1,842,833		7.64%	140,806

Water

Description	Capital Structure	Ratio	As Adjusted--Present: Rate Base	As Adjusted--Present: Embedded Cost/Return	As Adjusted--Present: Overall Cost/Return	As Adjusted--Present: Income For Return	After Proposed Increase: Rate Base	After Proposed Increase: Embedded Cost/Return	After Proposed Increase: Overall Cost/Return	After Proposed Increase: Income For Return
	$	%	$	%	%	$	$	%	%	$
Long-Term Debt	136,789,585	59.10%	44,668	6.42%	3.79%	2,868	44,668	6.42%	3.79%	2,868
Common Equity	94,651,855	40.90%	30,912	33.02%	13.51%	10,208	30,912	35.41%	14.48%	10,947
Totals	231,441,440	100.00%	75,580		17.30%	13,076	75,580		18.27%	13,815

Sewer

Description	Capital Structure	Ratio	As Adjusted--Present: Rate Base	As Adjusted--Present: Embedded Cost/Return	As Adjusted--Present: Overall Cost/Return	As Adjusted--Present: Income For Return	After Proposed Increase: Rate Base	After Proposed Increase: Embedded Cost/Return	After Proposed Increase: Overall Cost/Return	After Proposed Increase: Income For Return
	$	%	$	%	%	$	$	%	%	$
Long-Term Debt	136,789,585	59.10%	1,044,447	6.42%	3.79%	67,053	1,044,447	6.42%	3.79%	67,053
Common Equity	94,651,855	40.90%	722,806	3.30%	1.35%	23,850	722,806	8.29%	3.39%	59,939
Totals	231,441,440	100.00%	1,767,253		5.14%	90,903	1,767,253		7.18%	126,992

Note: ORS used Capital Structure of Parent Company @ 9/30/2005.

Settlement Audit Exhibit DFS-10

Tega Cay Water Service, Inc.
Income Statement
Test Year Ended September 30, 2005

	Combined	Water	Sewer
	$	$	$
Operating Revenues			
Service Revenues - Water	346,686	346,686	0
Service Revenues - Sewer	600,216	0	600,216
Miscellaneous Revenues	14,148	6,343	7,805
Uncollectible Accounts	(3,158)	(1,146)	(2,012)
Total Operating Revenues	957,892	351,883	606,009
Maintenance Expenses			
Salaries and Wages	113,404	58,528	54,876
Purchased Power	51,569	14,361	37,208
Purchased Sewer & Water	(1,196)	(1,196)	0
Maintenance and Repair	189,535	20,422	169,113
Maintenance Testing	10,589	1,719	8,870
Meter Reading	10,091	10,091	0
Chemicals	14,669	7,571	7,098
Transportation	11,750	6,064	5,686
Operating Exp. Charged to Plant	(17,958)	(9,268)	(8,690)
Outside Services - Other	5,799	2,993	2,806
Total	388,252	111,285	276,967
General Expenses			
Salaries and Wages	52,865	27,284	25,581
Office Supplies & Other Office Exp.	20,422	10,540	9,882
Regulatory Commission Exp.	0	0	0
Pension & Other Benefits	31,858	16,442	15,416
Rent	4,466	2,305	2,161
Insurance	61,148	31,558	29,590
Office Utilities	9,165	4,730	4,435
Miscellaneous	6,458	3,333	3,125
Total	186,382	96,192	90,190
Depreciation	245,264	64,638	180,626
Taxes Other Than Income	206,869	105,160	101,709
Income Taxes - Federal	58,992	21,408	37,584
Income Taxes - State	1,338	486	852
Amortization of ITC	0	0	0
Amortization of PAA	0	0	0
Amortization of CIAC	(171,782)	(42,344)	(129,438)
Total	340,681	149,348	191,333
Total Operating Expenses	915,315	356,825	558,490
Net Operating Income	42,577	(4,942)	47,519
Interest During Construction	(80)	(20)	(60)
Interest on Debt	167,102	41,993	125,109
Net Income	(124,445)	(46,915)	(77,530)

Settlement Audit Exhibit DFS-11

Tega Cay Water Service, Inc.
Balance Sheet
September 30, 2005

Assets			
Plant In Service			
Water	3,003,103		
Sewer	9,039,280		
Total		12,042,383	
Accumulated Depreciation - Water	(731,857)		
Accumulated Depreciation - Sewer	(2,179,368)		
Total		(2,911,225)	
Net Utility Plant			9,131,158
Plant Acquisition Adjustment - Water	39,157		
Plant Acquisition Adjustment - Sewer	245,676		
Total			284,833
Construction Work In Process - Water	0		
Construction Work In Process - Sewer	0		
Total			0
Current Assets			
Cash	0		
Accounts Receivable - Net	144,432		
Other Current Assets	276		
Total			144,708
Deferred Charges			723
Total Assets			9,561,422
Liabilities and Other Credits			
Capital Stock and Retained Earnings			
Common Stock and Paid In Capital		2,606,917	
Retained Earnings		378,199	
Total			2,985,116
Current and Accrued Liabilities			
Accounts Payable - Trade		32,350	
Taxes Accrued		88,663	
Customer Deposits		58,630	
Customer Deposits - Interest		27,388	
A/P - Associated Companies		(950,188)	
Total			(743,157)
Advances In Aid of Construction			
Water		0	
Sewer		0	
Total			0
Contributions In Aid of Construction			
Water		1,686,534	
Sewer		5,128,610	
Total			6,815,144
Accumulated Deferred Income Tax			
Unamortized ITC		0	
Deferred Tax - Federal		517,970	
Deferred Tax - State		(13,653)	
Total			504,317
Total Liabilities and Other Credits			9,561,420

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-97-WS

IN RE: Application of Tega Cay Water Service, Inc. for adjustment of rates and charges and modifications to to certain terms and conditions for the provision of water and sewer service.	**SETTLEMENT TESTIMONY OF CONVERSE A. CHELLIS, III**

Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.

A. My name is Converse A. Chellis, III. I am a Certified Public Accountant ("CPA") and a principal in and the Director of Litigation Services and Property Tax Services for Gamble Givens & Moody, LLC, a public accounting firm with offices in Charleston, Kiawah Island, and Summerville, South Carolina. My office is located at 133 East First North Street, Suite 9, Summerville, South Carolina 29483.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. In 1965, I graduated from The Citadel, The Military College of South Carolina with a bachelor's degree in business administration. I also have completed graduate level courses in accounting at the University of Georgia. In addition, I have had a minimum of forty (40) hours of continuing professional education ("CPE") each year since 1969, for a total of at least 1,440 total CPE hours.

Q. PLEASE DESCRIBE YOUR WORK HISTORY AND PROFESSIONAL EXPERIENCE PRIOR TO YOUR CURRENT POSITION.

A. Upon graduation from The Citadel in 1966, I served in the United States Air Force and was assigned to the Auditor General's staff. In 1969, I joined Touche Ross (now Deloitte and Touche) and was a senior accountant. I formed Chellis and Chellis in 1972, and have been a name partner and managing partner in several accounting firms until 1998. In 1999, I merged my firm with Gamble Givens & Moody, where I am a principal and Director of Litigation Services.

Q. ARE YOU A MEMBER OF ANY PROFESSIONAL ASSOCIATIONS?

A. Yes. I am a member of the American Institute of Certified Public Accountants ("AICPA"). From 1983-1985, I served on AICPA's continuing education executive committee, and in 1985 I served on the AICPA council.

I am also a member of the South Carolina Association of Certified Public Accountants ("SCACPA"). I served as Vice-President of the SCACPA's Coastal Chapter in 1977-78 and as President in 1978-79. In 1985 I served as the State President of the SCACPA, having previously served on the state level as Vice-President, Secretary/Treasurer, and Director. I have also been Chairman of the SCACPA's Committee on Continuing Professional Education, Chairman and trustee for the SCACPA's educational fund, and Chairman of the SCACPA's Committee on Cooperation with Governmental Agencies.

From 1986-1994, I was a member of the State Board of Accountancy, where I served as Secretary/Treasurer from 1988-1990 and Chairman from 1990-1993.

From 1982-1998, I was a member of Accounting Firms Associates, inc. I am also a past member of the American Society of Appraisers, and a current member of the American College of Forensic Examiners. In addition, I am a past associate in the Municipal Finance

Officers Association, and I have held various offices in the National Association of Accountants. I am also active in the peer review process, which involves examination of the work of other accountants and accounting firms to assure that quality controls are being applied in conformance with the Quality Control Standards adopted by the AICPA.

Q. HAVE YOU EVER GIVEN ANY PRESENTATIONS TO OTHER ACCOUNTANTS OR AUDITORS?

A. Yes. I have been a speaker and an instructor for the accounting profession on a number of accounting topics, including topics related to generally accepted accounting principles ("GAAP").

Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT WITNESS IN A SOUTH CAROLINA COURT?

A. Yes. I have been qualified as an expert witness in both the circuit and family courts of South Carolina. I have also given testimony before this Commission and other administrative agencies.

Q. WHAT IS THE PURPOSE OF YOUR SETTLEMENT TESTIMONY?

A. The purpose of my settlement testimony is to support the adoption of the Settlement Agreement reached between Tega Cay Water Service, Inc., or "TCWS", and the South Carolina Office of Regulatory Staff, or "ORS", in this case.

Q. IN YOUR OPINION, IS THE SETTLEMENT AGREEMENT A REASONABLE MEANS OF RESOLVING THE ISSUES IN THIS CASE?

A. Yes, it is.

Q. WHAT IS THE BASIS FOR YOUR OPINION IN THIS REGARD?

A. I have several reasons for believing that the Settlement Agreement is a reasonable means by which to resolve the disputed issues in this case. First, one of the statutory duties of ORS is to facilitate the resolution of disputed issues involving matters within the jurisdiction of the Commission. I think it incumbent upon the other parties in cases before the Commission, which in this proceeding is only TCWS, to work with ORS in good faith in an attempt to reach a settlement. I believe that the Settlement Agreement reflects a good faith effort on the part of ORS and TCWS to meet their respective obligations in that regard.

Second, and as Dr. Skelton mentions in his testimony in support of the Settlement Agreement, capital markets recognize the value of settlements in ratemaking cases. Additional investment resulting from favorable capital markets would be an enhancement to economic development in South Carolina which is consistent with the public interest.

Third, a settlement brings the matter to an end without delay and the uncertainty of further proceedings; this in turn permits ORS to focus its talents and resources on other matters within its area of responsibility and permits the Company to focus upon the continued improvement and expansion of its facilities and services for the benefit of its customers.

In summary, the comprehensive settlement proposed by the parties in my opinion fairly balances the interest of the customers and the Company. I therefore respectfully urge that the Commission approve the Settlement Agreement.

Q. DOES THIS CONCLUDE YOUR SETTLEMENT TESTIMONY?

A. Yes it does.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-97-WS

IN RE: Application of Tega Cay Water Service, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service.	**SETTLEMENT TESTIMONY OF B. R. SKELTON, PhD.**

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is B. R. Skelton and my business address is 2962 Walhalla Highway, Six Mile, South Carolina 29682. I am Professor *Emeritus* of Economics at Clemson University and am engaged in a variety of private business endeavors, including real estate brokerage and residential construction. I also act as a mediator and arbitrator. Since 1974, I have mediated 190+ disputes and written decisions in over 1000 arbitration cases, mostly union-management grievances. I have also arbitrated deferrals from the courts and the NLRB.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I received my B.S. degree in Arts & Sciences (History & Economics) from Clemson University in 1956. In 1958, I received a Masters of Science degree in Agricultural Economics from Clemson University. I received my Ph.D. in Economics from Duke University in 1964.

From 1959 to 1987, I was a professor of Economics at Clemson except for 1961-63 when I was in graduate school at Duke University. In addition to teaching standard economic theory, my academic background includes writing, lecturing and research in the areas of labor economics, economic development and arbitration. While at Clemson, I was a member of the Southern Economics Association and American Economic Association. I was also a member of the Arbitration Panel of the Federal Mediation and Conciliation Service and the American Arbitration Association. I retired from Clemson in 1987.

Q. PLEASE DESCRIBE YOUR WORK IN THE REAL ESTATE FIELD.

A. Over time I have developed subdivisions, commercial property, apartments and bought and sold real estate of all types.

Q. DO YOU PROVIDE ANY CONSULTING SERVICES?

A. I have served as a consultant to various individuals and companies, mostly wrongful death and injury, divorce, product liability and valuation of business losses. I was President of Economic Research and Consulting Associates prior to 1980, the business that provided this analysis. I have testified before the PSC in one case involving a water company in Oconee County.

Q. DO YOU HOLD ANY OTHER PROFESSIONAL DESIGNATIONS?

A. Yes. I am a mediator and arbitrator and am licensed by the State of South Carolina as both a real estate broker and residential contractor. I am also an elected member of the National Academy of Arbitrators and have been a member since 1981.

Q. WHAT IS THE PURPOSE OF YOUR SETTLEMENT TESTIMONY?

A. The purpose of my testimony is to provide support for the Settlement Agreement entered into by the parties in the proceeding on August 21, 2006. Specifically, I will be testifying as to the reasons why the 9.40% Return on Equity ("ROE") agreed to by the parties is a reasonable ROE for the Company in the context of a comprehensive settlement of this specific case and why the Commission should approve the proposed settlement.

Q. WHY, IN YOUR OPINION, IS THE SETTLEMENT ROE OF 9.40% SUPPORTABLE AS A REASONABLE ROE FOR THE COMPANY IN THE CONTEXT OF A COMPREHENSIVE SETTLEMENT AGREEMENT?

A. In the context of the present settlement agreement, which disposes of all issues in the case, rates set based upon a 9.40% ROE can provide investors the opportunity to earn a reasonable return on the Company's capital investment. Based on my knowledge of the capital market, and my understanding of its expectations related to regulated and non-regulated returns in the present economic context, I believe that 9.40% is a sufficient return which the capital market would expect in the context of a comprehensive settlement.

Q. WHY IS A SETTLEMENT IMPORANT TO CAPITAL MARKETS?

A. I believe that investors place great importance on the settlement of litigation disputes involving any industry. I am aware from my experience in mediating and arbitrating labor disputes that the capital markets in general react favorably to the settlement of wage/benefit issues which comprise only one aspect

of the overall financial picture for non-regulated industries. Whether utility rate cases are settled or litigated is even more important to investors in the utility industry as these cases involve every aspect of the financial picture of a utility and therefore figure prominently in analysts' reports and evaluations of these cases. The settlement of a rate case is therefore a factor that strongly influences the capital market's assessment of the regulatory climate a utility operates in. The capital market sees settlements as an indication of a cooperative relationship between a utility and its regulators and the other participants in the regulatory process. Given this, I believe that this settlement should be approved.

Q. IN YOUR OPINION, ARE THERE OTHER REASONS WHY THE COMMISSION SHOULD APPROVE THE SETTLEMENT PROPOSED BY THE PARTIES IN THIS CASE?

A. Yes. I believe that administrative economy supports Commission approval of the proposed settlement and that settlements should be favored since they reflect a solution devised by the parties which is more likely to address their needs.

Q. WOULD YOU ELABORATE ON THAT STATEMENT?

A. Yes. The Commission has scarce resources available to be used in the discharge of its duties. These are important duties which have been delegated to the Commission by the legislature. Settlement of this case will permit the Commission to focus its resources on other matters within its purview. Further, in my experience as a mediator and arbitrator, I have come to understand that part of the value of settling disputed matters is that it results in a resolution more likely to fit

the needs and circumstances of the parties than does an imposed resolution. I believe that to be the case here.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

EXHIBIT " E" to Settlement Agreement
Docket No. 2006-97-WS

TEGA CAY WATER SERVICE, INC.

PROPOSED SCHEDULE OF RATES AND CHARGES

I. WATER

1. CHARGE FOR WATER DISTRIBUTION ONLY

Where water is purchased from a government body or agency or other entity for distribution by the Company, the following rates apply:

Residential

Basic Facilities Charge per single family house, condominium, mobile home or apartment unit:	$7.56 per unit*
Commodity charge:	$1.69 per 1,000 gallons or 134 cft

*Residential customers with meters of 1" or larger will be charged commercial rate

Commercial

Basic Facilities Charge	$7.56 per single family equivalent (SFE)
Commodity charge:	$ 1.69 per 1,000 gallons or 134 cft

The Utility will also charge for the cost of water purchased from the government body or agency, or other entity. The charges imposed or charged by the government body or agency, or other entity providing the water supply will be charged to the Utility's affected customers on a pro rata basis without markup. Where the Utility is required by regulatory authority with jurisdiction over the Utility to interconnect to the water supply system of a government body or agency or other entity and tap/connection/impact fees are imposed by that

entity, such tap/connection/impact fees will also be charged to the Utility's affected customers on a pro rata basis, without markup.

Commercial customers are those not included in the residential category above and include, but are not limited to hotels, stores, restaurants, offices, industry, etc.

The Utility will, for the convenience of the owner, bill a tenant in a multi-unit building, consisting of four or more residential units, which is served by a master water meter or a single water connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure of an owner to pay for services rendered to a tenant in these circumstances may result in service interruptions.

When, because of the method of water line installation utilized by the developer or owner, it is impractical to meter each unit separately, service will be provided through a single meter, and consumption of all units will be averaged; a bill will be calculated based on that average and the result multiplied by the number of units served by a single meter.

2. Nonrecurring Charges

Tap Fees	$600 per SFE*

3. Account Set-Up and Reconnection Charges

a. Customer Account Charge - for new customers only $30.00

b. Reconnection Charges: In addition to any other charges that may be due, a reconnection fee of Forty dollars ($40.00) shall be due prior to the Utility reconnecting service which has been disconnected for any reason set forth in Commission Rule R.103-732.5. Customers who ask to be reconnected within nine months of disconnection will be charged the monthly base facility charge for the service period they were disconnected. The reconnection fee shall also be due prior to reconnection if water service has been disconnected at the request of the customer.

4. Other Services

Fire Hydrant – One Hundred ($100.00) per hydrant per year for water service payable in advance. Any water used should be metered and the commodity charge in Section One (1) above will apply to such usage.

5. Billing Cycle / Late Payment

Recurring charges will be billed monthly in arrears. Nonrecurring charges will be billed and collected in advance of service being provided. Any balance unpaid within twenty-five (25) days of the billing date shall be assessed a late payment charge of one and one-half (1.5%) percent for each month or any party of a month that said payment remains unpaid.

6. Extension of Utility Service Lines and Mains

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to connect to its water system. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to any appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule, and comply with the guidelines and standards hereof, shall not be denied service, unless water supply is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving water system. In no event will the Utility be required to construct additional water supply capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding water supply capacity to the affected water system.

7. Cross Connection Inspection Fee

Any customer installing, permitting to be installed, or maintaining any cross connection between the Utility's water system and any other non-public water system, sewer or a line from any container of liquids or other substances, must install an approved back-flow prevention device in accordance with 24A S.C. Code Ann. Regs. R.61-58.7.F.2 (Supp. 2004), as may be amended from time to time. Such a customer shall annually have such cross connection inspected by a licensed certified tester and provide to Utility a copy of a written inspection report and testing results submitted by the certified tester in accordance with 24A S.C. Code Ann. Regs. R.61—58.7.F.8.(Supp. 2004), as may be amended from time to time. Said report and results must be provided by the customer to the Utility no later than June 30th of each year. Should a customer subject to these requirements fail to timely provide such report and results, Utility may arrange for inspection and testing by a licensed certified tester and add the charges incurred by the Utility in that regard to the customer's next bill.

* A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory

Loadings for Domestic Wastewater Treatment Facilities -- 25 S.C. Code Ann. Regs. 61-67 Appendix A (Supp. 2005), as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee.

II. SEWER

1. Monthly Charges

Residential - charge per single-family house, condominium, villa, mobile home or apartment unit:	$33.02 per unit
Commercial:	$33.02 per SFE*

Commercial customers are those not included in the residential category above and include, but are not limited to, hotels, stores, restaurants, offices, industry, etc.

The Utility will also charge for treatment services provided by the government body or agency, or other entity. The rates imposed or charged by the government body or agency, or other, entity providing treatment will be charged to the Utility's affected customers on a pro rata basis, without markup. Where the Utility is required under the terms of a 201/208 Plan, or by other regulatory authority with jurisdiction over the Utility, to interconnect to the sewage treatment system of a government body or agency or other entity and tap/connection/impact fees are imposed by that entity, such tap/connection/impact fees will be charged to the Utility's affected customers on a pro rata basis, without markup.

The Utility will, for the convenience of the owner, bill a tenant in a multi-unit building, consisting of four or more residential units, which is served by a master sewer meter or a single sewer connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure of an owner to pay for services rendered to a tenant in these circumstances may result in service interruptions.

2. Nonrecurring Charges

Tap Fees (which includes sewer Service connection charges and capacity charges)	$1,200.00 per SFE*

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of a non residential customer is less than one (1). If the equivalency rating of a non residential customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the

appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the sewer system is requested.

3. Notification, Account Set-Up and Reconnection Charges

a. Notification Fee

A fee of fifteen ($15.00) dollars shall be charged each customer to whom the Utility mails the notice as required by Commission Rule R. 103-535.1 prior to service being discontinued. This fee assesses a portion of the clerical and mailing costs of such notices to the customers creating the cost.

b. Customer Account Charge - for new customers only.

A fee of twenty-five ($25.00) dollars shall be charged as a one-time fee to defray the costs of initiating service. This charge will be waived if the customer is also a water customer.

c. Reconnection Charges: In addition to any other charges that may be due, a reconnection fee of two hundred fifty ($250.00) dollars shall be due prior to the Utility reconnecting service which has been disconnected for any reason set forth in Commission Rule R.103-532.4.

4. Billing Cycle

Recurring charges will be billed monthly, in arrears. Nonrecurring charges will be billed and collected in advance of service being provided.

5. Extension of Utility Service Lines and Mains

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to discharge acceptable wastewater into one of its sewer systems. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to an appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule and to comply with the guidelines and standards hereof, shall not be denied service, unless treatment capacity is unavailable or unless the South Carolina Department or Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving sewer system. In no event will the Utility be required to construct additional wastewater treatment capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of

all costs associated with adding wastewater treatment capacity to the affected sewer system.

*A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory Loading for Domestic Wastewater Treatment Facilities --25 S.C. Code Ann. Regs. 61-67 Appendix A (Supp. 2005), as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee

6. Toxic and Pretreatment Effluent Guidelines

The Utility will not accept or treat any substance or material that has been defined by the United States Environmental Protection Agency ("EPA") or the South Carolina Department of Environmental Control ("DHEC") as a toxic pollutant, hazardous waste, or hazardous substance, including pollutants falling within the provisions of 40 CFR 129.4 and 401.15. Additionally, pollutants or pollutant properties subject to 40 CFR 403.5 and 403.6 are to be processed according to the pretreatment standards applicable to such pollutants or pollutant properties, and such standards constitute the Utility's minimum pretreatment standards. Any person or entity introducing any such prohibited or untreated materials into the Company's sewer system may have service interrupted without notice until such discharges cease, and shall be liable to the Utility for all damages and costs, including reasonable attorney's fees, incurred by the Utility as a result thereof.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-92-WS

IN RE:	)	
	)	
Application of Carolina Water Service, Inc. for adjustment of rates and charges and modification of certain terms and conditions for the provision of water and sewer service.	)	**BOND**

KNOW ALL PEOPLE BY THESE PRESENTS, that Carolina Water Service, Inc. as principal and _____ Insurance Company, a corporation under the laws of the State of _____, duly authorized to transact business in the State of South Carolina as surety, are held and firmly bound unto the customers of Carolina Water Service, Inc. affected by Order No. 2006-543 of the Public Service Commission, dated October 2, 2006, and any Order denying reconsideration thereof, issued in the above-captioned proceeding, for the sum of four hundred seventy four thousand one hundred seventeen and No/100s Dollars ($474,117.00) in lawful money of the United States of America, for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Commission Orders under appeal are ultimately determined to be valid and enforceable, then, Carolina Water Service, Inc. hereby promises to refund amounts it has collected in excess of the

amounts finally determined to be correct under the appropriate rate schedules. Any such refunds shall include interest as provided by law.

SIGNED, sealed and dated this _____ day of _____, 2006.

As to Principal

Carolina Water Service, Inc.

_____
Witness

_____

ATTEST:

_____
Witness

_____

As to Surety

_____Insurance Company

_____
Witness

_____

_____
Witness

WITNESS AS TO PRINCIPAL

STATE OF _____

_____ County.

Before me, the subscribing Notary Public, personally appeared _____ and made oath that he/she saw the within named Carolina Water Service, Inc. Company represented by sign, seal, and deliver the within Bond, and that he/she with _____ Subscribed their names as witness thereto.

_____

Sworn to and subscribed before
me this _____ day of _____, 2006.

_____(L.S.)
Notary Public

WITNESS AS TO SURETY

STATE OF _____

_____ County.

Before me, the subscribing Notary Public, personally appeared _____ and made oath that he/she saw the within named _____ Company represented by sign, seal, and deliver the within Bond, and that he/she with _____ Subscribed their names as witness thereto.

_____

Sworn to and subscribed before
me this _____ day of _____, 2006.

_____(L.S.)
Notary Public